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HOSPITAL LAW

HOSPITAL LAW

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PREFACE

This digest of hospital law grew out of a brief study suggested by the late A. R. Warner, Secretary of the American Hospital Association, who had been in his official capacity confronted with legal questions involving hospitals and with legislative matters relating to hospitals. The study was continued with the encouragement and cooperation of the Hospital Library and Service Bureau, in the expectation that the material gathered would form the basis of a legal service bureau to assist hospitals in their legal problems and committees in their efforts for or against legislation affecting hospitals.

The study disclosed that hospital law is assuming an important place in the work of hospital boards and managers. It has always concerned them because of the property rights of the hospital which might be involved, but in recent years the vast growth of hospitals and their diverse ramifications have intensified the risks to property rights. Besides that, there are more complicated social relations which have created a strong trend toward legislation, both in favor of and against certain aspects of hospital management. Every year the hospitals are turning to the Legislature for legislation improving the status of the hospital and enabling a wider use. Every year also certain interests, mostly antagonistic to the medical administration, attempt to regulate the hospitals in the interests of certain cults of healing. The hospitals have therefore a defensive as well as a constructive legislative program on their hands at every legislative session.

Another phase of hospital law which assumes greater importance each year is the extension of the public hospital under state, city, county, or district management. At every legislative session there are proposals introduced and enacted,

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extending the scope of public hospitals. Needless to say such extension needs the help and guidance of those who are most deeply concerned with the broad expansion of hospital service to all of the sick. Inevitably, public hospitals are to increase, but the direction of that increase should be somewhat moulded by constructive hospital study and influence.

It has been the aim of this book to bring together all that exists in laws and court decisions and to draw out whatever was found to be the settled law on different phases. Inasmuch as hospital law is in a somewhat nebulous state, it was found that the presentation of the various divergencies as well as agreements in decisions should be set forth in the form of a digest. To aid hospital superintendents in its use, extensive quotations have been made from the decisions so as to disclose the facts of the case and set forth the principles of hospital management as decided by the courts.

The book is presented to the hospital world as an attempt to make a constructive contribution to the work of hospitals and their associations in the law and legislation affecting them.

JOHN A. LAPP.

DOROTHY KETCHAM.

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TABLE OF ABBREVIATIONS

Abb. N. Cas. (N. Y.)	Abbott's New Cases, New York.
A. & E. Ency	American and English Encyclopedia.
Allen	Allen's Massachusetts Reports.
Am. Dec	American Decisions.
Am. Rep	American Reports (Selected Cases).
Am. St. Rep	American State Reports.
Atk. or Atk. Rep	Atkyn's English Chancery Reports.
Atl.	Atlantic Reporter.
C. J.	Corpus Juris.
Cyc.	Cyclopedia of Law and Procedure.
D. R.	District Reports (Pennsylvania).
F. or Fed	Federal Reporter.
Gill & J	Gill and Johnson's Reports, Maryland.
Gray	Gray's Reports, Massachusetts.
How. (U. S.)	Howard's Reports, U. S. Supreme Court.
L. Ed. or Led	Lawyer's Edition, Supreme Court Reports.
L. R. A.	Lawyer's Reports Annotated.
La. Ann.	Louisiana Annual Reports.
Lane L. R.	Lane's Louisiana Reports.
Ld. Raym.	Lord Raymond's English King's Bench Reports.
Metc.	Metcalf's Massachusetts Reports.
Misc. Rep.	Miscellaneous Reports (N. Y.).
N. E.	North Eastern Reporter.
N. J. Eq.	New Jersey Equity Reports.
N. W.	North Western Reporter.
N. Y. S.	New York Supplement.
Pac.	Pacific Reporter.
Q. B. D.	Queen's Bench Division, English Law Reports.
R. C. L.	Ruling Case Law.
S. E.	South Eastern Reporter.
S. W.	South Western Reporter.
So.	Southern Reporter.
St. at L.	Statutes at Large.
Sup. Ct. or S. Ct.	Supreme Court Reporter.
U. S. L. Ed.	United States Supreme Court Reports, Lawyer's Edition.
U. S. R. or U. S. Rep.	United States Supreme Court Reports.
Wheat. (U. S.)	Wheaton's United States Supreme Court Reports.

HOSPITAL LAW

INTRODUCTION

THE SOURCES OF HOSPITAL LAW

Knowledge of Law Necessary. Hospital managers and boards have an increasing need for knowledge of hospital law. This need is due to the growth of the law as it affects hospitals and its complexity because its origin is found in so many sources. At every step the law is a factor to be considered. New legislation and court decisions are piling up year by year relating to incorporation, liability, taxation, public aid, hospital records, nuisances, and management of hospitals, even to the selection of the staff.

Hospital managers cannot be indifferent to the changing legal status of hospitals and to the new legislation which is continually proposed. Wise guidance of legislatures and more social and legal data in litigation are the needs of the hour. Hospitals have come to fill such a tremendous place in social and economic life that they touch new points where controversies arise over rights of people and property. This results in increased legislation and in more entangling decisions of courts.

Sources of Hospital Law. The law as it affects hospitals is derived from three sources: The Constitution, both state and national, legislative statutes, federal and state, and the common law, which has come down to us from ancient times through long lines of custom, as interpreted by the courts. City councils also regulate certain phases of hospital activity under permissive statutes of the State Legislature. Each of these sources of law is important, for from each comes a large portion of the law which organizes and controls hospitals and allied institutions and perhaps often vexes the directors and managers thereof.

The Constitution of the State and the Nation are the supreme law in this field, as in all others. The statutes of states and the common law interpretation of judges may be nullified at one stroke by a constitutional provision. The legislative bodies acting within the constitutional limitations may nullify at a stroke the decisions of courts rendered under the common law, but in the absence of limiting legislation and constitutional provisions, courts have a free hand in applying common law doctrines to legal situations as they arise. Likewise, in the absence of constitutional limitations, the legislative bodies have a free hand in supplanting or nullifying common law findings of the courts.

The relative position of each source of law becomes, therefore, a study of fundamental importance for those who must guide the legal destinies of hospitals and allied institutions, and for those who are called upon to make and unmake laws affecting such institutions.

The Constitutions as Sources of Law

The Federal Constitution. The Federal Constitution is a grant of certain authority to the federal government. By the express limitations of the Constitution, Congress can pass no laws except upon the subjects designated, and such as may be reasonably required to carry such laws into effect, or to secure the objects of the Constitution. Since no power was given to Congress to pass laws effective in the states directly relating to such matters as hospitals, there is no federal legislation which directly controls hospitals, public or private, in the states. Congress does have power in the territories and the District of Columbia, and hospitals and allied institutions in the District of Columbia and in the territories are subject to any law which Congress may make affecting them. With respect to such hospitals Congress has few limitations, for the Constitution does not specifically limit the power of Congress except, of course, where the exercise of power might invade civil and property rights, which are protected by the first ten amendments to the Constitution. While Congress does not have power to regulate hospitals within the states, it does have power, by virtue of the commission to promote the general welfare, to provide

hospitals, dispensaries, and institutions for its own use, and for the promotion of special objects such as the rehabilitation of soldiers and the public health. Congress also has considerable power in regulating interstate and foreign commerce, to establish quarantine regulations. It may also affect interstate transportation in any form. Its taxing power extends widely to corporations and individuals, and is of great interest to hospital managers. Corporation, income, and inheritance taxes often concern the hospitals vitally.

The Federal Constitution's limitation upon the states is in many respects its most important function. Some provisions protect corporations and individuals against arbitrary action by the states. The provision that "no state shall pass any law impairing the obligation of contracts," protects hospitals and allied institutions against arbitrary actions tending to violate their charters, or to take their charters or other vested rights away without due cause. It protects also against many other attempts to interfere with the established legal rights of institutions which have come to be accepted in the nature of contracts. More important still is the provision of the fourteenth amendment, which reads that "no state shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." The word "person" as used in this amendment is construed by the courts to include corporations.

It follows that any attempt to invade the rights of hospitals or allied institutions without due process of law would come squarely up against this provision. To show the far-reaching effect of this provision, one need only refer to the recent decision in the so-called foreign language cases, in which the Court nullified a state law which prohibited the teaching of any foreign language in any elementary private, public, or parochial school. The Court concluded that this law invaded the right of a person as a parent to determine the kind of education that his child shall receive, and if he desires his children to learn French, German, or Spanish, it was an invasion of his rights to prohibit instruction in private schools in those languages.

One need but carry the analogy to the consideration of

such laws as those proposed in several legislatures, requiring hospitals to open wide their staffs to all physicians, osteopaths, and even chiropractors, to see what the Supreme Court of the United States would say. Clearly, such laws would interfere with a hospital's right to run one of the most vital parts of its own business, and they would undoubtedly be nullified, under the provision above quoted.

No cases affecting hospitals in this respect have been decided by the Supreme Court of the United States, but in view of the trend of the Courts' opinions its decisions could not be doubted.

The influence of the Constitution of the United States is, therefore, negative, rather than positive. It limits legislation, but does not authorize it, except as indicated above. It will doubtless become increasingly important if unfair attempts are made through state legislation or enforcement to interfere too directly with the legal rights of hospitals and allied institutions.

The State Constitution. The State Constitution is also a negative rather than a positive force. Since the states possess all powers "not delegated to the United States by the Constitution, nor prohibited to it by the states," it follows that within its borders the State may do anything affecting hospitals which does not interfere with the provisions of the Federal Constitution. The State Constitution may provide anything it pleases regulating the organization, control, and management of hospitals, subject only to the limitations of the Federal Constitution. It may even evade the provisions of the Federal Constitution by providing that hospitals thereafter organized shall be subject to such provisions as it imposes. While it cannot affect those previously organized, which have rights established, it can fix the conditions upon which future hospitals may be built. In practice, the State Constitutions protect the rights of individuals and corporations in the same manner as the Federal Constitution. The Bill of Rights and other limitations prevent arbitrary invasion of the rights of liberty and property without due process of law. The State Constitutions generally authorize, or at least do not prohibit, the organization of public hospitals by cities, counties, and State, and in some instances the organization

and management of such institutions are specifically fixed in the State Constitution.

With respect to private hospitals, however, there are rarely any special provisions. The Legislature is left free to pass such laws as it sees fit, subject always to the limitations of the Federal and State Constitution. In most of the states the only provision which most directly affects benevolent institutions is the provision relating to taxation, which provides either that the Legislature shall exempt property used for charitable, benevolent, educational, and other purposes, or that it may exempt such property if it sees fit. Since words used such as "charitable, benevolent," etc., are subject to different interpretations, it becomes a matter of frequent controversy as to whether an institution is or is not entitled to exemptions under the legislative statute or under the mandatory provisions of the Constitution.

This situation gives rise to the question which frequently comes up in courts as to what is a charitable institution. Hundreds of cases have been decided on this point. They come up in all kinds of diverse circumstances and the decisions are exceedingly instructive.

The Legislature may definitely exempt hospitals or not, provided the Constitution is not mandatory upon that point. If the Constitution is mandatory, then the Legislature may interpret in legislation what it thinks a charitable hospital is, but the final authority rests in the courts, which, when called upon to determine as between a statute and a provision of the Constitution, must make the Constitution prevail. It inevitably devolves upon the courts to determine such questions, and this makes the court decision with respect to such matters as taxation of the very first importance.

Another question which arises in taxation legislation is the extent to which the property of a charitable institution may be exempted. It is clear that the property used and useful for the conduct of the business is exempted under such provisions, but what about property that is held by the institution as an investment? What about property that is held by the institution for the possibilities of future growth, or for the prospects of increased value? What about property used as a farm or garden in connection with the institution?

Many varied circumstances under which property is held give rise to knotty legal questions which must be decided under the terms and provisions of the State Constitution.

Another way in which the State Constitution may affect legislation relating to hospitals is found in connection with the home rule charters of cities, adopted under the provisions of the State Constitution. In such charters, broad grants are given to the city authorities to do certain things, among which may be building and conduct of public hospitals or the licensing and regulation of private hospitals in one way or another. Where such provisions prevail, the State Legislature does not have a free hand to legislate, for the Constitution is the supreme law, and the local city council has a field marked out for it, which the Legislature may not invade. With the exception of these limiting provisions of the Constitution, the Legislature has a comparatively free hand. It may not invade the rights of persons and property, and it must conform to the provisions laid down in the State Constitution relating to exemption from taxation and to the powers exclusively granted to cities under home rule charters. It must conform to other minor provisions that may appear in the Constitution, or that might be adopted, otherwise it has no limitations in dealing with the hospitals and allied institutions.

To the State Legislature, then, we must look for the main body of express statutes, always remembering that statutes may be superseded by new state constitutional provisions, or by amendments to the Constitution of the United States.

State Laws Concerning Hospitals

Power of State Legislature. It has already been pointed out that the State has a comparatively free hand in providing for public hospitals operated by the State, and in authorizing cities, counties, towns, townships, and specially organized districts to maintain one or another form of hospital to meet local needs. A few State Constitutions lay down specific provisions relating to state institutions and their management, but in most of the states the Legislature is comparatively free in this respect. We have as a result the development of hospitals for the insane in all states, and hospitals and insti-

tutions for feeble-minded, epileptic, the blind, deaf, inebriates, and crippled children in many states. Nearly all states maintain state sanatoria for tuberculosis. The growth of legislation for state hospitals and institutions of one kind or another has been enormous, and it appears that we are, as yet, merely in the beginning of this development.

State legislation authorizes cities, counties, and other local units to maintain many different types of hospitals and institutions, and as a result we have city hospitals for general care of patients, tuberculosis hospitals operated by counties, cities, and districts, contagious disease hospitals, psychopathic hospitals, and other forms of specialized institutions. The growth here, too, has been enormous and seems only in its beginning. The details of much of this legislation will be found in the digest in the Appendix.

In the matter of private hospitals, the Legislature exercises wide, far-reaching, and increasing control. Its control appears first in the laws relating to the incorporation of hospitals. This is primarily a legal process and does not in itself relate to the character of the work done. As a rule, the laws permit hospitals to be organized either as business corporations for profit, or as benevolent and charitable institutions not for profit. Subject to such constitutional limitations as may exist in the State, the Legislature has a free hand in determining the conditions which must be complied with before a hospital may be incorporated. The determination as between a hospital for profit and a benevolent institution is important in respect to the liability of the hospital and exemption from taxation. But it should be remembered that the present interpretation is not inexorable law, since the Legislature might change it if it saw fit, and tax or not tax, make liable or not liable a charitable institution.

The Legislature has a free hand to license hospitals, or to authorize their licensing by local officials, unless, of course, the Constitution of the State makes general rules for such licensing or its prohibition. This is, however, rare, if it exists at all. The State Legislature has a free hand also in requiring certain conditions before a hospital is organized. It may require approval by some state authority as to its competency in management and material organization, and may even

require proof of necessity. In fact, the Legislature may do about anything it wishes in imposing conditions upon the starting of hospitals and similar institutions. It is only after rights have accrued that the Legislature begins to be limited by constitutional provisions, which prevent the unreasonable regulation or taking of property without due process of law.

The Legislature may fix the liability of hospitals for damages to its patients, or to others, but in the absence of such provisions the courts apply the common law or the general statutes of liability. The Legislature may overturn these interpretations, as was well illustrated in Rhode Island a number of years ago where the Court decided that charitable institutions were liable for damages to patients. The Legislature immediately passed an act declaring that charitable hospitals were not liable, and the rulings thereafter necessarily conformed to that statute. The State Legislature may provide for the regulation of hospitals in the interests of health and safety, subject only to the limitations that it must not arbitrarily deprive persons or corporations of their property without due process of law. Recently, proposals have been made for far-reaching interference with private hospitals, as though they were on the same basis as public institutions. Bills requiring that hospitals that did not open their staffs to all physicians in the community would be taxed, or otherwise arbitrarily dealt with, and bills requiring that staff positions be open to osteopaths and chiropractors, are of this character. Clearly, they would interfere with the private management of hospitals to such an extent as to arbitrarily infringe upon the constitutional rights of persons and corporations. The fact that they are benevolent or charitable corporations does not permit any more interference than would be permitted in a case of a business corporation for profit. As cases under such laws have not gone to the highest courts, this statement is necessarily built upon theoretical reasoning.

Again, it should be stated that similar provisions might be imposed upon hospitals afterwards organized, since it does not take away the rights of a person or corporation if he accepts certain conditions before he actually begins to operate.

The City Council. The legislative control of hospitals and institutions by city councils is subject always to the State Legislature, or, in the case of home rule cities, to the State Legislature as restricted by the home rule charter in the Constitution. In the main, the city council may license hospitals and institutions; may regulate practices in the interest of health and safety; may prohibit hospitals in certain sections if they would become public nuisances; may zone the city and restrict hospitals to certain sections; may regulate ambulance driving, etc.

The inspection of hospitals and institutions for sanitary reasons is almost everywhere possible, and generally carried on by boards of health under general or specific authorizations. In the absence of state laws authorizing licensing, inspection, supervision, etc., the city council would probably have a right, in the interests of general safety, to regulate hospitals, and would undoubtedly have that right so far as the protection of health and safety are concerned. In the case of home rule cities, the city council must look to the constitutional provision for home rule for its powers. If the home rule provision is merely a grant by the Legislature, it must look to the home rule statute, but in such case the Legislature having the right to pass the act would have the right to repeal or change it. Legal questions are likely to arise only in case of constitutional home rule, for there the courts must determine when the Legislature has or has not the power to give or withhold regulations.

Court Decisions and the Hospitals. We come now to the third general division of our subject, the field of court decisions in relation to hospitals. We have already seen that the Federal Government has little authority to regulate institutions within the states. The prime interest which we have in the federal courts, therefore, arises out of their power to declare state laws unconstitutional if they interfere with the provisions of the United States Constitution protecting the obligations of contracts, and the liberty and property of persons and corporations. State laws or municipal ordinances, which violate those provisions, may be taken to the Supreme Court for final decision. A few cases go to the federal courts because of diversity of citizenship.

The point of great interest in connection with the federal courts' power is that they do not exercise common law jurisdiction. In the absence of statutes, the federal courts cannot look to the common law for interpretations, hence, we have no such field of judge-made law as we have in the state courts. The federal courts may construe acts of Congress but they may not go beyond those acts unless specifically allowed. They must find the regulation or the liability imposed by the act. They cannot search for regulations or liabilities in the common law. The state courts, on the other hand, do seek beyond the statutes to find and impose the common law. This means that in the case of federal courts we look to the acts of Congress, but in the state courts we look to the statutes of the State Legislature, plus the great body of common law developed by the courts through centuries in this country and in England.

One of the principal subjects which come within the range of the courts' interpretation is the question of liability for damages, and since this generally involves the question of whether or not the institution is a charitable one, it becomes necessary, in almost every case, to determine that question; so, the bulk of court decisions, aside from those that definitely interpret statutes or constitutional provisions, such as those relating to exemption from taxation, center around the question of liability. Again, it should be emphasized, however, that although such decisions are generally accepted, the Legislature may overturn such decisions by statutes.

So important are the interpretations relating to liability for damages that a brief review of the present status seems desirable here. As a general rule, it may be said that the courts exempt public institutions and hospitals from all liability for damages caused by the acts of servants. It is also generally true that private hospitals for profit are subject to all the liabilities to which any other business corporation would be subject. The charitable and benevolent institutions conducted without profit are subject to varying liabilities. The decisions of the courts are not unanimous, some exempting them from liability altogether, while others place considerable liability upon them. Our discussions will relate primarily to the third group—the charitable and benevolent hospitals.

Liability of the Hospital. There are two phases of this question—liability on contract and liability for torts. When is a hospital liable for damages in either case? It may be said that, generally speaking, in the matter of contracts, the benevolent and charitable institutions are liable for the acts of their authorized agents. If a hospital manager, acting under authority, engages on contract to do a thing, it is rather clear that the hospital ought to be liable for damages caused by the failure of the hospital to perform its part of the contract. If a manager proceeded without authority, he would himself be liable. It is not an interference with the rights of charitable institutions to compel the managers thereof to fulfill obligations freely and lawfully entered into. In the absence of fraud such hospitals are and ought to be liable for the fulfillment of their obligations. There is an increasing tendency to bring cases into court on the basis of contracts rather than upon the basis of torts. If it was proved that a hospital agreed to give certain services to patients, and fails to give them, or is incompetent in giving them, then the patients in several cases in court have recovered; whereas, in the absence of an express or implied contract, they could not collect if the case was taken on the basis of liability for torts. Since, however, most cases do not arise and cannot be brought under liability for contracts, we have the main subject to be considered always in connection with the liability of hospitals, namely, liability for torts.

Liability for torts is the center of much of the litigation which goes to the higher courts and is given the larger proportion of attention in the discussion in this book. More than 1,000 cases directly affecting hospitals have been decided in recent years in American courts. The hospital law questions involved in these cases, and their importance to hospital managers, may be illustrated by the following types of cases taken at random relating to articles of incorporation: Autopsies, disposal of dead bodies, care and treatment of patients, powers granted under the charter, contracts, damages, charitable purposes, eminent domain, restraint of inmates, hospital records as evidence, injury to employees, licensing of hospitals, negligence, nuisances, appointment of officers and trustees, powers and duties of officers, rules and regulations, exemption from taxation, trusteeships, wills and bequests.

Hospital Law in the Making. The work here presented on hospital law is, in its essence, a summary of the present legal situation affecting hospitals and allied institutions. It brings together the concurrences and divergencies of court discussions. In a subject of so many diversities it does not attempt to lay down final principles. Hospital law is in the making and this book is an attempt to assemble the various materials out of which it is being made.

CHAPTER I

HOSPITAL DEFINITIONS

§ 1. **Importance of a Definition.** The legal definition of a hospital is important because of the use of the term in constitutions, statutes, wills, and other legal documents. The question, What is meant by the term "hospitals"? in a section of a constitution or statute providing for exemption of hospitals from taxation, or when, in a devise of property, it is provided that a "hospital" shall be established, must be definitely answered.[1] Public and property rights are involved,

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[1]The Century Dictionary (1902) defines the derivation and various meanings of the term hospital. The Latin term **hospitalis** meant of or relating to a guest or host, while as a noun it meant a guest (hospes). From this comes the term hospitality. The second meaning has a Middle English form **hospital, hospitalle,** and the old French term **hospital,** meaning a hospital, the modern French term hôpital. The Middle Latin term **hospitale** meant a large house, a palace, an inn. The same word contracted appears in English as **hostel** (of Middle English origin) and more recently as **hotel.** The two meanings are closely related: "An institution or establishment for dispensing hospitality or caring for the needy; an asylum for shelter or maintenance." This use still appears in the term **foundling hospital;** Greenwich **Hospital** for retired seamen; or Christ's **Hospital,** "for the free education of boys," founded by the Corporation of London, chartered in 1553 and often called the Bluecoat School, from the uniform of its pupils. Another and now more specific meaning is that of "an establishment or institution for the care of the sick or wounded, or of such as require medical or surgical treatment. . . . " "A Roman lady named Fabiola, in the fourth century, founded at Rome, as an act of penance, the first public hospital . . . " Lecky European Morals II, 85.

Murray's New English Dictionary says: (The old French form **hospital** and modern French form, etc.) The original meaning was that of a house or hostel for the reception and entertainment of pilgrims, travelers, and strangers; a hospice (1300). Then a charitable institution for the housing and maintenance of the needy; an asylum for the destitute, infirm, or aged (1418). A charitable institution for the education and maintenance of the young (1552). The current and special use is that referring to "an institution or establishment for the care of the sick or wounded, or those who require medical treatment." The institution may be public or private, free or paying—or both combined—general or special with respect to the diseases treated.

The Encyclopedia Britannica gives a satisfactory discussion: The Latin term **hospitalis** is the adjective of **hospes,** meaning host

and frequently the courts are called upon to make the final determination.

§ 2. **Difficulty of Defining Hospital.** The meaning of the term hospital is complicated by the closeness of resemblance among institutions which provide for sick, dependent, delinquent, or aged people. Is a home for the aged a hospital? Are orphanages, houses of refuge, reformatories, or day nurseries, hospitals? In modern language the expression "hospitals and allied institutions" is used to denominate the field. But when, in law, is an institution a hospital, and when is it an allied institution?

§ 3. **Legal Definitions.** A hospital is legally defined as "an institution for the reception and care of the sick, wounded, infirm, or aged persons."[2]

The Ruling Case Law of England gives the following definition: "In its widest sense a hospital is a place appropriated to the reception of persons sick or infirm in body or in mind. In Great Britain the word hospital has been used in some instances to denote an institution in which poor children are fed and educated. But that is not its ordinary meaning. More commonly the word is applied to a building founded through charity, where the sick and disabled may be treated solely at their own expense, or at the sole expense of the corporation."[3] It may be used as synonymous with the term "asylum" which is defined as an "institution for receiving, maintaining, and as far possible, ameliorating the condition of persons suffering from bodily defects, mental

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or guest. The place where a guest was received was in Latin **hospitium** (Fr. **Hospice**), but the terms **hospitalis** (sc. domus) **Hospitale,** (sc. cubiculum) and **hospitalia** (sc. cubicula) came into use in the same sense. Hence there arose the French term **hospital,** hospital, as applied to establishments for temporary occupation by the sick for the purpose of medical treatment, and **hospice** to places for permanent occupation by the poor, infirm, incurable, or insane; the form **hotel,** became restricted except in the case of **Hotel-Dieu** to private or public dwelling houses for ordinary occupation. In England **Hostel** retained the earlier sense and **Hotel** came to be used in the sense of a superior inn. The term **Hospital** was used both in the sense of a permanent retreat for the poor, infirm, or for the insane, and also for a regular institution for the temporary reception of sick cases; but in modern usage it has been gradually restricted to the latter use, while the terms such as almshouse and asylum are used to refer to those institutions for permanent care.

2 Cyclopedia of Law and Procedure, 1906. Vol. 21, p. 1105.

3 1916, 13 R. C. L. 938.

maladies, or other misfortunes, as an orphan asylum, an asylum for the blind, an asylum for the insane, etc. In its English acceptation the word is most commonly used to denote an establishment for the detention and cure of persons suffering from mental diseases, and also, a place for the upbringing of orphans."

This definition would appear to be inconsistent in part with modern usage in this country, since it includes orphanages as hospitals. If the orphanage is a place primarily for bringing up normal children who are dependent, then it should not be considered a hospital, but if it takes care primarily of sick or defective children, it would be clearly a hospital.

In order to be considered a hospital, the prime, not the incidental, purpose must be the care of physical or mental ailments. In an English case concerning a home for children it was said: "There is no reason for saying in the present case that the children are kept in this building for the treatment of their physical ailments. . . . Some of the children in a home may not be infirm, others may be; but they are not in the home for treatment; they are there for the purposes of maintenance during the period of their education. No doubt their bodily ailments must, as in the case of ordinary children, be attended to when necessary, but that is not the purpose for which they are there; the building is, therefore, in my opinion, clearly not a hospital, but a home."[4]

§ 4. **Synonymous Terms.** The term hospital is often used synonymously with "asylum," "almshouse," and similar terms. A hospital may be an almshouse but it does not follow that an almshouse is a hospital. In re Curtis holds that a hospital "for the care and treatment of sick and disabled indigent patients" is an almshouse.[5] "Doubtless there are charitable corporations which may not be comprehended within the definition of "almshouse." The primary meaning of the word "hospital," for instance, was an inn (and from which our modern word "hotel" is derived), where guests were entertained for compensation. Now the word is more commonly applied to a building founded through charity,

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[4] 1901, Moses vs. Marsland, 1 K. B. 668, 65 J. P. 183.

[5] 1889, In re Curtis. 7 N. Y. S. 207.

where the sick and disabled may be treated solely at their own expense, or at the sole expense of the corporation which receives only indigent patients, and then has all the attributes of an almshouse, and in either case it becomes, as we understand the term, a charitable institution.[6]

The terms schools, retreats, homes, and asylums are virtually synonymous: "All institutions in this State (Michigan), established and maintained at the public expense, for the care, education, and support of the unfortunate, belong to this class of institutions, and are included in the term 'asylums.' . . ."[7]

Various American decisions have from time to time further defined the word and interpreted its meaning. A comparatively recent case has defined a corporate hospital as one "organized to nurse the sick and to exercise care for poor and aged. . . ."[8]

There is a general agreement that a hospital is an institution for the reception and care of sick, wounded, infirm, or aged persons. It is generally incorporated, in which event it may be an eleemosynary or charitable institution, or it may be an institution for profit. One of the fundamental distinctions is whether it is a public or a private hospital.

§ 5. **Public and Private Hospitals.** Hospitals are spoken of as being public or private, according to the character of the work they do, and also with reference as to whether they are public or private corporations. Such usage is confusing.

A public hospital is one which not only serves a purpose for the whole community but is subject to the management, control, and direction of the community through the government. A private hospital is one which may perform the same services for the people of a community but is subject to the direction of private individuals or a private corporation. Public hospitals are, therefore, those which are conducted by local, state, and federal governments. Private hospitals are those which are conducted by private parties, either for profit or as agencies of charity. "Whether a corporation be public or private depends upon the nature of the franchise

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6 Blashfield, Dewitt C. Hospitals, 21 Cyc. 1106.

7 1893, Wolcott vs. Holcomb, 97 Mich. 361, 56 N. W. 837.

8 1920, Nicholas vs. Evangelical Deaconess Home and Hospital, 281 Mo. 182, 210 S. W. 643.

granted, and not the expected beneficial results to the community from the possession and exercise of these franchises.''[9]

''A corporation is public when it has for its object the government of a portion of the State; and although in such case it involves some private interests, yet, since it is endowed with some portion of political power, the term public has been deemed appropriate. Another class of public corporations consists of those which are founded for public—although not political or municipal purposes, and the whole interest in which belongs to the government. . . . But banks founded on private capital, hospitals founded on private benefactions, and colleges founded and endowed by private enterprise and liberality, although the funds may in part be derived from the bounty of the government, are private corporations. . . . ''[10]

§ 6. **A Private Hospital May Be a Public Charity.** A public hospital may then be defined in general as ''an institution owned by the public and devoted chiefly to public uses and purposes.''[11] But a private, benevolent hospital may be, nevertheless, a public charity because the word public has in fact two proper meanings. ''A thing may be said to be public when owned by the public, and also when its uses are public.'' '' . . . an institution established, maintained, and operated for the purpose of taking care of the sick, without any profit, or view to profit, but at a loss which has to be made up by benevolent contribution, is a charity. If, in addition to this, the institution is one, the benefits of which the public are generally entitled to enjoy, it is then a purely public charity, because, although not owned by the public, its uses and objects are wholly public, and for the benefit of the public generally, and in no sense private, as being limited to private individuals.''[12]

Whether a hospital is to be considered as a public or a private institution must depend, primarily, upon the purpose for which it was created, and the attending circumstances.[13]

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9 1838, Regents vs. Williams, 9 Gill & J. (Md.) 401.

10 1847, Cleveland vs. Stewart, 3 Ga. 283.

11 21 Cyc. 1106.

12 1880, Hennepin County vs. Brotherhood of Gethsemane, 27 Minn. 460, 8 N. W. 595.

13 1819, Dartmouth College vs. Woodward, 4 Wheat. (U. S.) 518, 4 L. Ed. 629.

A corporation may be private, and yet the act or charter of incorporation may contain provisions of a purely public character, introduced solely for the public good and as a general police regulation. If a corporation is eleemosynary and private at first, no subsequent endowment of it by the State can change its character and it is not sufficient to render a corporation public, that its ends are public.[14]

"Suppose an association of private individuals," said the Court in the case of an educational institution, "contributed funds in real or personal property, for the conduct and establishment of this very University (which in legal understanding would be a private charity), and had appointed professors, and constituted them governors and managers of the institution, and of the appropriated funds, the objects being the same as now, the promotion of religion, and the dissemination of scientific, literary, and medical knowledge, and the interests of the public in those objects the same; could the governors so appointed be considered public officers, or members of the civil government? And if not, why should the artificial being created by law, and composed of the same persons for the same purposes, thereby become a part of the civil government, and a public corporation? A private charity cannot, by a mere act of incorporation, be made a public one. In the language of Lord Hardwicke, the charter of the crown cannot make a charity more or less public, but only more permanent than it would otherwise be. And that is the settled law upon the subject."[15]

§ 7. **Public Corporation, Political.** "A public corporation is one that is created for political purposes, with political powers, to be exercised for purposes connected with the public good in the administration of civil government; an instrument of the government subject to the control of the Legislature, and its members officers of the government, for the administration or discharge of public duties, as in the cases of cities, towns, etc.; so where a bank is created by the government for its own uses, and the stock belongs exclusively to the government, it is a public corporation, and so of a hospital

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14 1838, Regents vs. Williams, 9 Gill & J. (Md.) 401.

15 1740, Attorney General vs. Pearce, 2 Atk. Rep. 88.

created and endowed by the government for general purposes of charity."[16]

"The corporation of the University has none of the characteristics of a public corporation. It is not a municipal corporation. It was not created for political purposes, and is invested with no political powers. It is not an instrument of the government created for its own uses, nor are its members officers of the government, subject to its control in the due management of its affairs, and none of its property or funds belong to the government. The State was not the founder, in the sense of that term as applied to corporations. It was the creator only, by means of the act of incorporation, and may be called the incipient, not the perficient founder. It gave to it in its creation the capacity to acquire and to hold property, but made to it no donation; and whatever property the corporation has is its own, to be managed and disposed of by the regents for the uses of the institution, in such manner as they may judge most promotive of its interests, and not for the uses of the government, but as the trustees determine merely for the University. It is said there have been subsequent endowments by the State. If it be so, they cannot affect the character of this corporation. If eleemosynary and private at first, no subsequent endowment of it by the State could change its character and make it public. . . . The uses or objects may, in a certain sense, be called public; but the corporations as distinguished from the uses or objects, are private."[17]

In Vincennes University vs. Indiana,[18] the question arose as to the public character of the institution (Vincennes University), and the holdings of the previous case were followed. "This corporation had no political powers, and its officers could, in no legal sense, be considered as officers of the State. They were not appointed by the State. Their perpetuity depended upon the exercise of their own functions; and they were no more responsible for the performance of their duties than other corporations established by the State to execute private trusts. The fact that the benefits of the donation would be enjoyed by the public generally would not make

[16] 1838, Regents vs. Williams, 9 Gill & J. (Md.) 399.

[17] 1838, Regents vs. Williams, 9 Gill & J. (Md.) 399.

[18] 1852, 14 How. (U. S.) 276.

the institution a public corporation. The act of incorporation was merely to give effect to the donation of land for the purpose of establishing a literary institution, but the donation in no sense proceeded from the State, it was made by the Federal Government, and is no more subject to state power than if it had been given by an individual for the same purpose. An act of incorporation being necessary would not be withheld to give effect to a private donation of land for the purpose of establishing a literary institution. Its benefits would be enjoyed by the public generally, but this would not make it a public corporation.''[19]

§ 8. **Effects of Legislative Control.** Because a hospital is under legislative control does not make it a state institution. '' . . . there are two sorts of corporations, the one constituted for public government, the other for private charity. The first, being duly created, (a) although there are no words in their creation for enabling their members to purchase, implead, or be impleaded, yet they may do all these things, for they are all necessarily included in and incident to the creation. . . . . . and these sorts of corporations are not subject to any founder or visitor or particular statutes, but to the general and common laws of the realm; and by them they have their maintenance and support. But the last sort of corporations, which is constituted for private charity, is entirely private and wholly subject to the rules, laws, statutes, and ordinances which the founder ordains and to the visitor whom he appoints, and to no others, and if the founder has not appointed any visitor, then the law appoints the founder and his heirs to be visitors. . . . Patronage and visitation both arise from the founders and the office of the visitor by the common law is to judge according to the statutes of the college, to expel and deprive upon just occasions, and to hear appeals.''[20]

In the case of Regents vs. Williams the Court said: ''Public corporations are to be governed according to the laws of the land, and the government has the sole right as

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[19] It is significant in this case that three justices, Mr. Chief Justice Taney and two others dissented, holding that the lands were conveyed to trustees who were but agents of the State, without any private interests. They were then public agents for a public purpose, etc.

[20] 1694, Philips vs. Bury, 1 Ld. Raym. 5.

the trustee of the public interest, to inspect, regulate, control, and direct the corporation. But it has no such right in relation to eleemosynary corporations or the management of their affairs. That belongs to the visitors alone, under the visitorial power incident to such corporations. . . . And all the authorities agree that colleges and academies established for the promotion of learning and piety, and endowed with property by public and private donations, are, in a legal sense, equally with hospitals for the relief of the poor, sick, etc., considered and treated as private eleemosynary corporations.''[1]

The fact that a hospital is free does not make it a public corporation, and a hospital may be private although partially endowed by the State.[2] ''Longview Asylum, though a public, is not a state institution within the meaning of Sec. 2, Art. 7, of the Constitution which requires the trustees of such institutions to be appointed by the Governor; and Sec. 2 of the act of April 5, 1878, providing for the appointment of directors of the asylum otherwise than by the Governor, is not in conflict with the above provision of the Constitution. . . . ''The grounds upon which it is claimed to be a state institution are that the State has contributed to its support; that it is governed by the laws of the State; and, moreover, that it is made the duty of the State, by the Constitution, to foster and support institutions for the benefit of the insane, deaf, and dumb. While it is true this duty is imposed on the State, yet it is left to the wisdom of the General Assembly to determine the character of the institutions through which the benefit is to be conferred. There is no constitutional inhibition against authorizing a county or the municipalities of the State to establish such institutions. All institutions for these purposes are not required to be state institutions; but when state institutions are created for the purpose, the Constitution requires the trustees to be appointed in the mode therein provided. The provision has no application to institutions for these purposes founded by individuals, or particular localities under authority granted for the purpose. Nor do such institutions become state institutions from the fact that they

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1 1838, 9 Gill & J. (Md.) 401.

2 1881, Chalfant vs. State, 37 Ohio St. 60.

are subject to legislative government and control. All institutions and corporations created for public purposes are subject to be thus governed. Nor is the character of the institution affected by the fact that the Legislature has contributed to its support. The institution was created to administer in a particular county a public charity, which the State is enjoined to foster, and there is no inhibition against the General Assembly giving it such aid as it may deem just."[3]

§ 9. **Effects of Public Appropriations.** Public appropriations from a city do not make a private hospital a public one.[4]

"A hospital founded by a private benefactor is, in point of law, a private corporation, although dedicated by its charter to general charity; so a college founded and endowed in the same manner, although, being for the promotion of learning and piety, it may extend its charity to scholars from every class in the community, and thus acquire the character of a public institution. . . . When a corporation is said at the bar to be public, it is not merely meant that the whole community may be the proper objects of the bounty, but that the government has the sole right as trustees of the public interests to regulate, control, and direct the corporation and its funds and its franchises."[5]

The famous case of the Trustees of Dartmouth College vs. Woodward[6] discussed the matter of incorporation in relation to the distinction between public and private institutions. This was an action brought by the Trustees of Dartmouth College against William H. Woodward in the State Court of New Hampshire for the book of records, corporate seal, and other corporate property, to which they claimed themselves to be entitled. The single question to be considered was: Do the acts to which the verdict refers violate the Constitution of the United States? A part of the opinion is quoted: "Whence, then, can be derived the idea that Dartmouth College has become a public institution, and its trustees public officers, exercising powers conferred by the public for public objects? Not from the source whence its funds are drawn;

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[3] 1881, Chalfant vs. State, 37 Ohio St. 60.

[4] 1895, Washingtonian Home of Chicago vs. City of Chicago, 157 Ill. 414, 41 N. E. 893.

[5] 1895, Same, 157 Ill. 414, 41 N. E. 893.

[6] 4 Wheaton (U. S.) 673.

for its foundation is purely private, and eleemosynary—not from the application of those funds; for money may be given for education, and the persons receiving it do not, by being employed in the education of youth, become members of the civil government. Is it from the act of incorporation? Let this subject be considered."

§10. **Incorporation Does Not Confer Governmental Power.** "A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality; properties, by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs, and to hold property without perplexing intricacies, the hazardous and endless necessity of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities that corporations were invented and are in use. By these means, a perpetual succession of individuals is capable of acting for the promotion of a particular object, like one immortal being. But this being does not share in the civil government of the country, unless that be the purpose for which it was created. Its immortality no more confers on it political power, or political character than immortality would confer such power or character on a natural person. It is no more a state institution than a natural person exercising the same powers would be. . . .[7]

"From the fact, then, that a charter of incorporation has been granted nothing can be inferred, which changes the character of the institution, or transfers to the government any new power over it. The character of civil institutions does not grow out of their incorporation, but out of the manner in which they are formed, and the objects for which they are created. The right to change them is not founded on

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7 1819, Same, 4 Wheat. (U. S.) 673.

their being incorporated, but on their being the instruments of government created for its purposes. The same institutions, created for the same objects, though not incorporated, would be public institutions and, of course, be controllable by the Legislature. The incorporating act neither gives nor prevents this control. Neither, in reason, can the incorporating act change the character of a private eleemosynary institution. . . .[8]

"From this review of the charter it appears that Dartmouth College is an eleemosynary institution, incorporated for the purpose of perpetuating the application of the bounty of the donors to the specified objects of that bounty; that its trustees or governors were originally named by the founder, and invested with the power of perpetuating themselves; that they are not public officers, nor is it a civil institution, participating in the administration of government; but a charity-school or seminary of education, incorporated for the preservation of its property, and the perpetual application of that property to the objects of its creator."[9]

Perry vs. House of Refuge held that "because a number of the board of managers are appointed by the State, and others by the mayor and city council of Baltimore, the corporation is not thereby converted into a public institution. . . . It has been distinctly declared that the appointment of trustees and directors by state and municipal authority, to participate in the management, does not divest these associations of the attributes of private corporations and clothe them with the immunities and privileges appertaining to public institutions."[10]

§ 11. **Charitable Institution Defined.** When is a hospital a charitable institution? This question is present in many cases involving hospitals, for upon its determination depends to a considerable degree such questions as the liability of hospitals for torts, and exemption from taxation.

A charity has been defined as "a gift to be applied consistently with existing laws for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education and religion, by relieving their bodies

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[8] 1819, Same, Wheat. 673.

[9] 1819, Dartmouth College vs. Woodward, 4 Wheat. (U. S.) 673.

[10] 1885, 63 Md. 21; 52 Am. Rep. 495. See also, 1871, Head vs. The Curators of the University of the State of Missouri, 47 Mo. 224.

from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government. It is immaterial whether the purpose is called charitable or the gift itself if it is so described as to show that it is charitable in its nature."[11]

In Ould vs. Washington Hospital,[12] where the question of the validity of a will was being discussed among others there were included the following objections: 1, That there was no specification of the foundlings to be provided for, and that, therefore, the devise was void for uncertainty; and 2, That the devise is void because it creates a perpetuity. The Court held that the devise was not invalid for uncertainty nor because it created a perpetuity. The Court remarks further: "A charitable use, where neither law nor public policy forbids, may be applied to almost anything that tends to promote the well-doing and well-being of social man." Perry on Trusts,[13] quotes the Girard will case which defines charity as including whatever is given for the love of God, or the love of your neighbor in the catholic or universal sense—given from these motives and to these ends, free from the stain or taint of every consideration that is personal, private, or selfish. "The objection of uncertainty in this case as to the particular foundlings to be received is without force. The endowment of hospitals for the afflicted and destitute of particular classes, or without any specification of class, is one of the commonest forms of such uses. The hospital being incorporated, nothing beyond its designation as the donee is necessary. Who shall be received, with all other details of management, may well be committed to those to whom its administration is intrusted."

In the case of Burbank vs. Burbank,[14] the Supreme Court of Massachusetts said: "The testator sought by his will to form a fund, and thereby to establish a hospital for the benefit of the residents of Pittsfield and others who might be there admitted for treatment. That this is a public charity requires no citation of authorities. The establishment of hospitals is

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[11] 1867, Jackson vs. Phillips, 14 Allen (Mass.) 556. See also, 1893, Crerar vs. Williams, 145 Ill. 625, 34 N. E. 467.

[12] 1877, 95 U. S. 303, 24 U. S. L. Ed. 450.

[13] 1924, Sec. 687, Zollman on Charities, p. 6 et seq.

[14] 1890, Burbank et al vs. Burbank, 152 Mass. 254, 25 N. E. 427.

indeed one of the objects enumerated in the statutes of 43 Elizabeth. . . . A gift is a public charity when there is a benefit to be conferred on the public at large, or some portion thereof, or upon an indefinite class of persons. Even if its benefits are confined to specified classes, as decayed seamen, laborers, farmers, etc., of a particular town, it is well settled that it is a public charity."

An institution which is established, maintained, and operated for the purpose of taking care of the sick, without any profit, or view to profit, but at a loss, which has to be made up by benevolent contribution, is a charity. "If in addition to this the institution is one, the benefits of which the public are generally entitled to enjoy, it is then a purely public charity—public, because although not owned by the public, its uses and objects are public; purely public because its uses and objects are wholly public, and for the benefit of the public generally, and in no sense private as being limited to private individuals."[15]

§ 12. **Public Charity Defined.** Is a charity always a public charity so as to come within the provisions of a constitution or statute which exempts public charities from taxation? An action was taken to recover municipal taxes from the Masonic Home of Pennsylvania, and the question was whether the appellee was an "institution of purely public charity," within the meaning of section 10, article 16, of the Constitution of 1874.[16] "The legal definition of the word charity has been the subject of much discussion in the courts, especially those of England, but its meaning here, discarding all technical sense, is 'a gift to promote the welfare of others.' The appellee clearly is a charity. It provides for and maintains in the 'Masonic Home' indigent, afflicted, and aged Freemasons. This, too, from voluntary contributions without charge to the beneficiaries, and with no profit to the corporation or to its officers. Not one of the corporate officers receives a cent of compensation for administering its affairs. . . . Of course, if this be not purely charity, nothing is. But is it a public charity? The word public relates to or affects the whole people of a nation or state. General Wagner (President

[15] 1881, Hennepin County vs. Brotherhood of Gethsemane, 27 Minn. 460, 462, 8 N. W. 595.

[16] 1894, Philadelphia vs. Masonic Home, 160 Pa. State. 578, 40 Am. St. Rep. 736.

of the Home) further testifies 'The home is open only to those who are Masons; a man to be admitted must be a Mason.' When the eligibility of those admitted is thus determined, it seems to us the institution is withdrawn from public and put in the class of private charities. A charity may restrict its admissions to a class of humanity, and still be public; it may be for the blind, the mute, those suffering under special diseases; for the aged, for infants, for women, for men, for different callings or trades by which humanity earns its bread, and as long as the classification is determined by some distinction which involuntarily affects or may affect any of the whole people, although only a small number may be directly benefited, it is public. But when the right to admission depends on the fact of voluntary association with some particular society, then a distinction is made which concerns not the public at large. The public is interested in the relief of its members because they are men, women, and children, not because they are Masons. A home, without charge, exclusively for Presbyterians, Episcopalians, Catholics, or Methodists, would not be a public charity. But, then, to exclude every other idea of public as distinguished from private, the word purely is prefixed by the Constitution; this is to intensify the word public, not charity. It must be purely public; that is, there must be no admixture of any qualification for admission, heterogeneous, and not solely relating to the public. That the appellee is wholly without profit or gain only shows that it is purely a charity, and not that it is a purely public charity. Nor does the argument that, to the extent it benefits Masons, it necessarily relieves the public burden, affect the question; there is no public burden for the relief of aged and indigent Masons; there is a public burden of caring for and relieving aged and indigent men, whether they be Masons or anti-Masons, but age and indigence concern the public no further than the facts of them; it makes no inquiry into the social relations of the subjects of them.

"Here, while the charter and by-laws of the institution do not show that it is not purely public, the undisputed facts, as to the administration of the charity, show that none were admitted except Freemasons, of course excluding all other

aged and indigent men, because they had not chosen to become members of a particular society. This made admission depend on an artificial badge of distinction, and not on one incident to humanity, and, therefore, it is not purely public.''[17]

The fact that a charitable institution receives persons who are able to compensate for the care and treatment they have does not alter the status of the institution. Such compensation amounts to no more than a contribution by such persons to the support of the institution. The authorities agree that such circumstances do not alter the character of the institution.[18]

§ 13. **Charitable Institutions May Charge.** That a hospital does not lose its charitable character because it receives an income from its beneficiaries is shown in a long line of judicial interpretations. This question was touched upon by the United States Attorney General as follows:[19] ''The benefits of a hospital for surgical or medical treatment are not restricted to indigent or defective classes, and the fact that some patients pay in whole or part does not make it less a charitable institution. There, it is true, the idea of treatment is involved; but the sick as well as the poor, and not necessarily only the sick who are poor, have always been embodied in the benefits of charitable foundations and modern hospitals.''

In the Lutheran Hospital Association of South Dakota vs. Baker,[20] the Court had before it the question whether or not the property of appellant, on which assessment and levy of taxes was made, was being used exclusively for charitable and benevolent purposes. The Court said: ''We are of the opinion that the appellant is a corporation or society organized and conducted exclusively for charitable purposes, and that its said property was and is being used exclusively for such purpose. The criterion in this class of cases seems to be that whatever is done or given gratuitously in the relief of public burdens or for the advancement of the public good is a public

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17 1894, Philadelphia vs. Masonic Home, 160 Pa. St. 578, 40 Am. St. Rep. 736.

18 1907, Adams vs. University Hospital, 122 Mo. App. 675, 99 S. W. 453.

19 23 Op. Atty. Gen. (U. S.) 287.

20 1918, 40 S. D. 226, 167 N. W. 148.

charity, and an institution founded as a purely public charity does not lose its character as such under the tax laws if it receives a revenue from the recipients of its bounty sufficient to keep it in operation; or, applying another test, if the object for which an institution is founded is the general public good, and not private gain, and it is so conducted that the public receives all the benefit of it, it is a public charity.

"Every characteristic in relation to the organization and conduct of appellant shows it to be an association organized and conducted for no other purpose than that of charity and benevolence. All the money receipts of whatever nature go towards providing the purposes for which appellant was brought into existence. The fact that it has a department for training nurses is not in conflict with its charitable purposes. . . . "[1]

In St. Joseph's Hospital Association vs. Ashland County,[2] the Supreme Court of Wisconsin, in an action to set aside taxes levied on the plaintiff's real estate in the city of Ashland, on the ground that it is exempt from taxation, had before it the question whether the Hospital Association is a benevolent association within the meaning of the law, and whether the evidence shows any use of the building for pecuniary profit. The Court declared it to be benevolent, and further said that the fact that there were surplus receipts at times which were used to build other hospitals of the same character, does not show the property was used for pecuniary profit. "How it can be doubted," the Court declared, "that this institution is doing a benevolent work in the truest sense of the word, we are unable to see. It is really the work of a good Samaritan. It is true that those who are able to pay do pay a very moderate weekly charge, but those who are unable to pay, receive the same care for nothing. This does not render the work done any the less benevolent. Doubtless, if the hospital were absolutely free to all, it could not be operated. It is the very fact that pay is collected from those who can pay which enables the Sisters to operate the hospital and care for those who are too poor to pay. . . . We entertain no doubt that the work of this association is a

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[1] 1918, Same, 40 S. D. 226, 167 N. W. 148.

[2] 1897, 96 Wis. 636, 72 N. W. 43.

benevolent work. The care of the sick and wounded of all races and religions indiscriminately, with or without pay, according to the ability of the patient, must ever be one of the most genuine forms of benevolence."[3]

An institution organized for the succor, care, and relief of aged, sick, poor persons who shall apply for the benefits and who shall be deemed by the trustees to be proper subjects for such aids, and which institution has no share of stock, is a charitable institution.

"The fact that patients who are able to pay are required to do so does not deprive the defendant of its eleemosynary character, nor permit a recovery for damages on account of the existence of contract relations. The amounts received are not for private gain, but contribute to the more effectual accomplishment of the purpose for which the charity was founded."[4]

In McDonald vs. Massachusetts General Hospital, a case in tort for injuries sustained by reason of negligent and unskilled surgical treatment by defendant's servants, the Supreme Court of Massachusetts declared: "The defendant was a public charitable institution under the laws of the Commonwealth. The object for which it was incorporated was to provide a general hospital for sick and insane persons. Its funds are derived from grants and donations made by the Commonwealth from profits which it is entitled to receive from the Massachusetts Hospital Life Insurance Company and other companies incorporated in the Commonwealth, and from the grants, devises, donations, bequests, and subscriptions of benevolent persons, and from the board of paying patients. While the price of board is placed as low as the funds of the hospital will permit, patients who are there received are expected to pay as nearly as possible according to their own circumstances and to the accommodations they receive. In addition to the accommodation provided for such patients, a number of free beds are furnished from the general funds of the institution and from donations made especially

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[3] 1897, Same, 96 Wis. 656, p. 640, 72 N. W. 43.

[4] 1894, Downes vs. Harper Hospital, 101 Mich. 555, 60 N. W. 42. See also 1895, Hearns vs. Waterbury Hospital, 66 Conn. 98, 33 Atl. 595; 1913, McInery vs. St. Luke's Hospital Association of Duluth, 122 Minn. 10, 141 N. W. 837; 1901, Powers vs. Mass. Homeopathic Hospital, 109 Fed. 294.

for this object, the occupants of which are not expected to pay anything."[5]

"The corporation has no capital stock, no provision for making dividends or profits, and whatever it may receive from any source it holds in trust to be devoted to the object of sustaining the hospital and increasing its benefit to the public, by extending or improving its accommodations and diminishing its expenses. Its funds are derived mainly from public and private charity; its affairs are conducted for a great public purpose, that of administering to the comfort of the sick, without any expectation on the part of those immediately interested in the corporation of receiving any compensation which will enure to their own benefit, and without any right to receive such compensation. This establishes its character as a public charity. . . . The fact that its funds are supplemented by such amounts as it may receive from those who are able to pay wholly or entirely for the accommodation they receive, does not render it the less a public charity. All sums thus obtained are held upon the same trust as those which are the gifts of pure benevolence."[6]

"Nor does the fact that the trustees, through their agents, are themselves to determine who are to be the immediate objects of the charity, and that no person has individually a right to demand admission to its benefits alter its character. All cannot participate in its benefits; the trustees are those to whom is confided the duty of selecting those who shall enjoy them, and prescribing the terms upon which they shall do so. If this trust is abused, the trustees are under the superintending power of this Court as a court of equity, by virtue of its authority to correct all such abuse, and the interest of the public therein, that is to say, of the indefinite objects of this charity, may be represented by the attorney general."[7]

The use of a portion of an institution for pay patients does not destroy the charitable character of the institution. In the case of Philadelphia vs. Pennsylvania Hospital for the Insane,[8] the Supreme Court of Pennsylvania, passed on "a

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5 1876, 120 Mass. 432; 21 Am. Rep. 529.

6 1876, Same, 120 Mass. 432, 21 Am. Rep. 529.

7 1876, Same, 120 Mass. 432, 21 Am. Rep. 529.

8 1893, 154 Penna. St. 9.

municipal claim for a water pipe filed against a portion of the premises of the West Philadelphia Branch of the Pennsylvania Hospital. This particular branch is devoted to the care of the insane. . . . While it is conceded that the buildings and grounds are exempt from taxation for the reason that defendant is a purely public charity, yet it was contended that within the portion of the grounds charged with this claim there is a large building reserved exclusively for the use of patients paying a higher rate than any others; that these payments much exceed the cost of maintenance. It appears to be conceded that the object of the trustees in maintaining this department of the institution is to make a profit, by the use of which to extend the institution's capacity for good among the destitute members of the community. It was not contended, nor is there anything to show that there was any actual profit realized in this department after taking into consideration the value of the ground and improvements, and the cost of maintenance. The apparent profit is applied to the general objects of charity, and no portion of it enures to the benefit of any person concerned in administering the charity.

"The Pennsylvania Hospital is a purely public charity in the highest and best sense of the term, and under all our authorities we think it is exempt from the species of taxation attempted to be imposed in the case."[9]

§ 14. **Charitable Institution May Exclude Certain Classes.** The exclusion of certain types of patients does not affect the status of an institution as a charity. A widow over sixty years of age unable to support herself, applied to the defendant corporation for admission as required by their rules and regulations. She was received as a permanent inmate "entitled to the rights and privileges thereto appertaining, upon the condition and consideration that she should make a certain payment of money and transfer to them the property she then possessed." In November, 1863, a certain room in the house was assigned to her and placed in her full possession; and in October, 1868, she alleges to have been wrongfully expelled therefrom with her clothing and furni-

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9 1893, Same, 154 Penna. St. 9.

ture by the defendants, following which they have refused to furnish further board and necessaries for her.[10]

The association's act of incorporation was entitled "An act to incorporate the Association for the Relief of the Aged Indigent Females," which is all it contained to indicate the purpose. "This indicates a mere charity. Its by-laws are more full. Its funds are derived from voluntary donations, and it has no capital stock, or provision for making dividends or profits. The services of the managers are gratuitous. Its special object is to provide a home for aged indigent females, and its funds are to be appropriated to that purpose and incidental expenses. It has erected a house for the purpose, and the board of managers and their appropriation committees are to determine who are fit subjects to receive this charity, what shall be done to aid them, and on what terms and conditions, and how long they remain.

"The general control of the Home and its inmates is intrusted to the board of managers. The plaintiff's counsel suggests they merely keep a boarding-house. If this be so, it is still true that furnishing board, lodging, and nursing to needy persons is among the most familiar and useful of charities, and that which constitutes such an institution a charity is that it does not furnish these things for profit. The small amount of money and property required to be furnished by those who enter as inmates goes to supplement the charitable fund, and falls far short of being a compensation to the defendants for what the inmate receives. Hospitals and schools generally require some payment of this kind, but are none the less charities on that account."[11]

§ 15. **Profits Applied to the Charitable Purpose.** A hospital building is not excluded from the benefits of a statute exempting from taxation property used for "purposes purely charitable," merely because certain patients therein pay for what they receive, where it appears that any profit derived therefrom is applied exclusively to the charitable purposes of the institution. In this case the Court said: "The fact that paying patients are taken, the profits derived from attendance upon these patients being exclusively devoted to the mainte-

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[10] 1872, Gooch vs. Association for the Relief of Aged Indigent Females, 109 Mass. 558.

[11] 1872, Same, 109 Mass. 558.

nance of the charity, seems rather to enhance the usefulness of the institution to the poor; for it is a matter of common observation . . . that the deserving poor can with difficulty be persuaded to enter an asylum of any kind confined to the reception of objects of charity. . . . The fact of receiving money from some of the patients does not, we think, at all impair the character of the charity, so long as the money thus received is devoted altogether to the charitable object which the institution is intended to further."[12]

"It appears from the pleadings in the present case that the whole object of the institution is charity, nobody connected with it can derive any profit from the work carried on there; any profit derived from pay patients is applied exclusively to the charitable purposes of the institution; and every part of the building is used exclusively for a hospital. The object being clearly charitable, and exclusively so, and all ideas of private gain, profit, or advantage being excluded, we are unable to see any reason for holding that the purpose is not purely charitable, within the meaning of the law."[13]

Property which is used exclusively for the purposes of a hospital and a training school for nurses, wherein all persons in need of medical or surgical treatment are received and cared for regardless of whether they have means to pay for such treatment or not, the hospital making no profit from the fees of patients able to pay, is exempt from taxation under an Illinois statute exempting from taxation all property of institutions of public charity when actually used for such charitable purposes, and not used with a view to profit.[14]

"The Board of Review found that the hospital, with its training school for nurses and medical dispensary is a bona fide general hospital; that it has no shares of stock and no provision for making any dividends or profits; that it is not managed or conducted in the interest of any person or per-

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[12] State ex rel. Alexian Bros. Hospital vs. Powers, 10 Mo. App. 263, decided in the St. Louis Court of Appeals, April, 1918, and affirmed by the Supreme Court, 74 Mo. 476.

[13] 1918, Same, 10 Mo. App. 263, affd. 74 Mo. 476.

[14] 1908, Board of Review of Cook County vs. Provident Hospital, 233 Ill. 242, 84 N. E. 216.

sons, and no one makes any profit, directly or indirectly, out of it. . . . "[15]

In the case of American Asylum vs. Phoenix Bank, the Court said that "this Asylum may, with the strictest propriety, be defined an incorporated school for charitable purposes. It is a school, which is a generic term denoting an institution for instruction or education; and from the nature of its object is a private incorporation. Its objects and operations are all of a private character; and the donations of the State to aid in effectuating them do not in the minutest degree change its nature. The institution is exclusively for charitable purposes, its sole object being to pour instruction into the minds of the deaf and dumb; . . . and to accomplish this through the means of funds derived from the gratuities of the benevolent. A purpose so honorable and noble and free from the dross of self-interest, brings the American Asylum peculiarly within the spirit, as it is obviously within the letter of the law which authorizes a compulsory subscription to the stock of the Phoneix Bank. The Asylum in no sense of the expression is a money making institution. All its funds are necessarily applicable to the charitable object of educating the deaf and dumb, and this is done gratuitously except so far as the power of doing so is enlarged by the sums paid for instruction by the rich and able. By this operation the funds of the institution are not absorbed but augmented; the charitable object of the Asylum is not changed but pursued. The funds of the institution are not applicable to any but eleemosynary purposes, nor have they been otherwise applied. If they had, it would have constituted a breach of trust for which there is a most obvious remedy. And as the trustees are alone authorized to act for the promotion of the benevolent object of the institution, so the donors are in no event entitled to any profit which might arise from the enlargement of its funds. Be they greater or less, they are consecrated to charity, and this decisively marks the eleemosynary character of the institution."[16]

A hospital was originally incorporated by several physicians and charitable ladies, and conducted by the

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[15] 1908, Board of Review of Cook County vs. Provident Hospital, etc. School Assoc., 233 Ill. 242, 84 N. E. 216.

[16] 1822, 4 Conn. 172, 10 Am. Dec. 112.

physicians alone under the same charter. Under the charter no profits could be realized and all receipts were to be devoted to the maintenance of the institution, which derived its revenues from gifts, bequests, and fees paid by patients, and which treated some patients entirely free, and charged others more or less, according to their circumstances. This is a "charitable corporation" which is not liable for the torts of its servants.[17]

In this case the respondents' attorney urged several reasons why the defendant could not be regarded as a charitable institution so as to exempt it from liability for the negligence of its servants. The Court disposed of these contentions thus: "In the first place, he relies upon the fact that the defendant is controlled by the physicians of Columbia, who are members of the Hospital Association. We have already shown that they are mere trustees for the purpose of carrying into effect the original purposes for which the Hospital Association was organized. They are not entitled to any part of the profits, and the only benefits they derived from the Association are merely incidental to their practice. There is no common fund to be divided among physicians, but each must look to the particular patient employing him for his fee without reference to the fees of other physicians. . . . The appellant next relies on the fact that plaintiff was a pay patient, . . . a hospital mainly supported by charity does not lose its character as a charitable institution by the fact that it accepts compensation and makes a charge for the use of rooms to those who are able to pay for them. . . .

"The next ground upon which it is urged that defendant should be held liable is that the hospital is a training school for nurses. This is a mere incident to the main purposes for which the Association was chartered, and does not destroy its charitable nature, but tends to render it more efficient." . . . Lastly, the Court refuted the contention that the hospital is a convenient and practical necessity and adjunct in the practice of physicians, . . . thereby destroying its charitable character.[18]

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[17] 1914, Lindier vs. Hospital, 98 S. C. 25, 81 S. E. 512.

[18] 1914, Same, 895, C. 25, 81 S. E. 512.

§ 16. **Private Hospitals For Profit.** Private hospitals and asylums may be organized and carried on as business enterprises for the profit of those interested. As was said in Ex-parte Whitewell[19] concerning the care of the insane: "The State may, of course, make proper laws for the care, government, and safe-keeping of the unfortunate insane within its limits. . . . In the discharge of this duty the State has provided public asylums to which persons who are so far disordered in mind as to be dangerous to remain at large, may, upon satisfactory proof of such condition of mind, be committed, . . . but it has made no provision at all for those of unsound mind who are not regarded as dangerous to themselves or the property or persons of others. . . . It will thus be seen that it was not the intention of the Legislature, in providing private asylums for the insane, to deprive the kindred and friends of even dangerous lunatics of the privilege of caring for them elsewhere, upon showing their ability and willingness to do so, while, as to those not regarded as dangerous to themselves or others, the law does not contemplate that they shall be confined in such asylums at all. But unfortunate persons belonging to this latter class are not to be denied the right to receive the patient attention, and often healing treatment of a comfortable private asylum or hospital, if they or their kindred or friends are able and willing to incur the expense of such care and treatment. The business, therefore, of conducting a private asylum, in which proper care can be given to such persons by a member or members of the medical profession having experience and special skill in the treatment of such cases, is a necessary and humane one; and the right to maintain such an asylum or hospital and to follow and practice this particular branch of the medical profession cannot be prohibited or burdened with unreasonable and oppressive conditions."

§ 17. **Hospital of Private Medical School Not a Charity.** Where a hospital is conducted as an adjunct of a medical school which is privately owned, the hospital is not a charitable one, even though its work is charitable.

In the case of the Gray Street Infirmary vs. Louisville[20]

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[19] 1893, 98 Cal. 73, 32 Pac. 870.

[20] 1901, 65 S. W. 11, 55 L. R. A. 270.

the highest court of Kentucky held that although an institution may do some charitable work, it is not of necessity exempt from taxation as "purely an institution of public charity."

"The owners of this hospital manage it, and determine what patients shall be admitted to its benefits. They charge all ward patients who are able to pay $5.00 per week, and $12.00 per week for the use of the private rooms. If the patient is unable to pay, he is operated upon in the amphitheater before the medical class. They charge and receive pay for their services where the patient is able to pay; and a part of the curriculum of the college is the clinics at the infirmary, and they are necessary in the teaching both of medicine and surgery. Dr. Grant testifies that the institution would not have been established, except that the incorporators hoped to receive pecuniary advantage from it, either directly or through their connection with the college. We have no doubt, from the testimony, that the professors in the medical college do a great deal of charitable work in the infirmary; yet the real purpose in establishing the infirmary was to make their medical college more attractive to students, and to induce attendance by reason of the instruction and clinical experience received in the infirmary, and in this way to increase the profits of the professors operating the college. Certainly, such an institution cannot be exempted from taxation on the ground that it is purely an institution of public charity."[1]

The case of University of Louisville vs. Hammock[2] follows the same ruling. "The hospital in which appellees received the injuries complained of is an adjunct of the appellants' school of medicine . . . and is maintained principally because of the advantages it affords the students and professors of that institution. It is, however, also conducted for compensation and profit. In the main, patients received and treated at the hospital are required to compensate those in charge of it for the services rendered. This is certainly true, according to the evidence, as to patients able to pay. It is true some patients unable to pay are received and treated

1 1901, Same, 65 S. W. 11, 55 L. R. A. 270.

2 1907, 127 Ky. 564, 106 S. W. 219.

free of charge, but this does not show that appellant conducted a purely public charity; and, to escape liability for the wrongful acts or negligence of its servants, it should have been proved that such was the character of the hospital and the use to which it is devoted.

"If, as must be conceded, appellants' hospital is subject to taxation because it is not a charitable institution, it is for the same reason responsible for the torts of its agents and employees."

In Wathen vs. City of Louisville[3] the Kentucky Court of Appeals remarks: "It is manifest from the evidence that the hospital is maintained because it is necessary to the successful conduct of the School of Medicine. Without the clinical instruction and the operations by the professors in the presence of the students, the school could not be maintained with success. The hospital is an adjunct, a part of the medical school. Whatever gain may result from the operation of the medical school goes to the owners of the property. While the evidence shows a great deal of charity work is performed in the treatment of patients and in dispensing medicines, still the institution is conducted for profit. As it is operated for gain, no part of it is exempt from taxation, under section 170 of the Constitution."

In the case of Hogan vs. Clarksburg Hospital Co.,[4] a hospital for profit was defined as one "incorporated and conducted for private gain and for the benefit of the stockholders thereof.

"It cannot be claimed that the defendant hospital here is a charitable institution. It was chartered and organized by four physicians and one other stockholder for the profits that could be made out of it for their private gain."

§ 18. **Articles of Incorporation Determine Character.** The character of an institution, whether charitable or profit-making, must be determined from the articles of incorporation. If a hospital is incorporated as a business corporation, it cannot be considered charitable in law, even though its work is entirely devoted to charity.

In the case of Gitshoffen vs. Sisters of Holy Cross Hospital Association,[5] decided by the Supreme Court of Utah,

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3 1905, 27 Ky. L. R. 635, 85 S. W. 1195.

4 1907, 63 W. Va. 84, 59 S. E. 943.

5 1907, 32 Utah 46, 88 Pac. 691.

an action was brought to recover damages alleged to have been sustained by plaintiff through defendant's negligence while he was an inmate of its hospital. It was alleged in the complaint that the defendant was a corporation organized and existing under the laws of the State of Indiana, and was doing business in the State of Utah exclusively for profit. The defendant in its answer admitted and alleged that it was a corporation organized under the laws of Indiana for the purpose of establishing, maintaining, and conducting hospitals for the treatment of sick, wounded, and injured persons; with authority, the defendant established a hospital at Salt Lake City, Utah, for the treatment of such persons, but alleged that the hospital was conducted by the defendant solely as a charitable institution, and not for profit.

The findings of the Court were stated thus: "The law under which the defendant was organized required that the objects of the corporation should be fully set out in the articles of incorporation. This was done by the defendant. Had it not stated the purpose for which the statute authorizes a corporation to be formed, the defendant would not be legally incorporated. The law further required that, if the corporation is organized for pecuniary profit, it must set forth in its articles the amount of the capital stock, and the number of shares into which the same is to be divided, with the amount of each share, which shall not exceed $100. This the defendant did by stating its capital stock to be $10,000, divided into 10,000 shares of $1.00 each. The principal features of charitable corporations are "that they have no capital stock, and that their members can derive no profit from them. . . .

"The law also required the term of existence of the corporation to be stated, which, if organized for pecuniary profit, shall not exceed fifty years. The articles as filed by the defendant gave it all the rights, powers, and privileges given to corporations by common law, to sue and be sued, to hold, acquire, purchase, and sell such personal and real property as may be necessary to carry out the objects of the corporation, and to borrow money, to mortgage and incumber the real and personal property of the corporation to secure the same. Indeed, the corporation, by its articles, and the law under which it was organized is given all the rights,

powers, and privileges that are usually, or that can be given to a business corporation. Thereunder dividends could be declared and paid to the stockholders the same as any business corporations might do, and the members permitted to derive whatever profit there might be in the business. The articles are in harmony with those of a business corporation, and wholly inconsistent with those of a charitable organization. The fact that a corporation was formed for the purpose of maintaining and conducting hospitals for the treatment of the sick, wounded, and injured persons, and for the care of the infirm, is not controlling, for such things may be done for profit as well as for charity. The articles upon their face purport to create an organization for pecuniary profit. It has been quite generally held that the nature of the corporation must be determined from its articles of association, and that its character cannot be changed or modified by parol evidence; that the object and purpose for which a corporation is organized must be gathered alone from the written instrument, and cannot be aided or varied or contradicted by testimony or averments aliunde the instrument itself. . . . Looking at the articles themselves, we are also of the opinion that the purpose of the Association as therein disclosed, is for pecuniary profit, and not charity.''[6] The judgment of the lower Court was reversed and a new trial granted.

To the same effect was the decision in the case of Craig vs. Benedictine Sisters' Hospital[7] determined by the Supreme Court of Minnesota in an action to recover damages for the death of plaintiff's intestate, caused by the negligence of the defendant.

After setting forth the facts the Court takes up the question of whether or not the corporation is a charitable one, therefore, exempt from liability. ''Defendant was incorporated under the provisions of title 2 c. 34 Gen. St. 1894. Its articles of incorporation, which are in compliance with the provisions of that statute, provide that the nature of the business of the corporation is to establish, erect, own, maintain, and conduct hospitals, orphanages, and other similar institutions, throughout the State; provide for a capital stock

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6 1907, Same, 32 Utah 46, 88 Pac. 695.

7 1903, 88 Minn. 535, 93 N. W. 669.

of $100,000, and limit the amount of indebtedness to $100,000; provide for a board of directors to manage its affairs, to be elected from and by the stockholders, and upon their face show that it was organized as an ordinary business corporation. At the trial, evidence was offered to show that it is in fact a charitable association; that patients are received at its hospitals, cared for, and treated without charge to those who are unable to pay; that no capital stock was ever in fact issued; and that the corporation depends almost wholly for its support upon contributions from charitably disposed persons. The evidence was objected to by plaintiff, but the Court received it, and this ruling is assigned as error. . . . "We have held in several cases that the nature and character of a corporation must be determined from its articles of association, and that its character cannot be changed or modified by parol evidence that it was not in fact such a corporation as its articles purport to make it; that, in determining the character of corporations, the articles of association are the sole guide. . . . To be consistent, we must hold that as it appears from its articles of association that defendant is an ordinary business corporation, its nature and character cannot be shown to be different by parol evidence. . . . "[8]

§ 19. **Fraternal Societies' Hospitals Not Charities.** Hospitals maintained by mutual benefit societies are not charitable hospitals in a legal sense, because they are maintained for a definite group of people and for their advantage, and not for the advantage of an indefinite public.

In the case of Brown vs. La Societe Francaise de Bienfaisance Mutuelle,[9] decided by the Supreme Court of California, an appeal was made by the defendant from a judgment in favor of the plaintiff for the sum of $1,550 damages suffered by him while an inmate of defendant's hospital, from the negligent and unskilful conduct of defendant's surgeon in setting his fractured leg. The contention of the hospital was that as a charitable institution in the absence of allegation or proof of negligence, in their selection, the institution was not liable for the negligence of its servants.

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[8] 1903, Same, 88 Minn. 535, 93 N. W. 669.

[9] 1903, 138 Cal. 475, 71 Pac. 516.

From the by-laws of the defendant, it appeared that the Society was originally organized as a voluntary association, afterwards incorporated by the filing of a certificate of election of trustees; and the adoption of new by-laws. "From these it appears," said the Court, "that the Society is established on the basis of mutuality for the treatment of sick members, or, as more specifically provided, for the purpose of securing to its members (without payment otherwise than of dues), medical and surgical treatment, including the services of its physicians, surgeons, apothecaries, dentists, nurses, etc., and also medicine. Nor do we find in it any provision for assistance to others except paying patients, or sick persons, not members, admitted to treatment for agreed compensation. It is, therefore, an association for mutual profit or benefit, similar in its essential nature to other societies formed for such purposes."[10]

The Court affirmed the judgment appealed from, holding that the defendant was an association for mutual profit, and was, therefore, liable to a patient treated for pay, for the negligence of its physicians in treating such patient.[10]

This case was followed by the case of In re Dol's Estate or Societe Francaise de Bienfaissance Mutuelle de Los Angeles vs. Flint et al.,[11] where the defendant was organized as a corporation in 1862, under the provisions of an act concerning corporations. Its articles of incorporation contained the statement "that the objects of said Society should be mutual assistance to the members thereof in case of sickness." The by-laws declared that the Society was "established for the only purpose of mutual assistance in case of sickness." They further provided that all persons of the white race of good health, sound mind, and good morals could be admitted as members of the Society; that, in order to become a member of the Society, the applicant must pay an admission fee varying from $3.00 to $20.00, according to age; that all members should pay monthly dues varying from 50 cents to $2.00, according to age; and that failure to pay dues should forfeit the rights of membership. The Society established a hospital

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[10] 1903, Same, 138 Cal. 475, 71 Pac. 516.

[11] 1920, In re Dol's Estate, 187 Pac. 428.

and employed physicians, and the by-laws in effect provided that members should be entitled to admission to the hospital and medical treatment therein on depositing one week's charges in advance, and to visits by the Society physician at their homes. Other persons, not members, could be admitted to the hospital on payment of such sum as the directors should exact.

"It will be observed that no person is to receive any benefit from the Society except members thereof, and such others as should be admitted to the hospital upon the payment of an agreed compensation.

"We are of the opinion that the Society is not a charitable or benevolent Society," said the Court. "The members of the corporation here involved are interested therein substantially in the same way as the members of a voluntary association or partnership formed for the same object are interested. No sound distinction exists on this ground. In each case the arrangement partakes of the nature of a contract whereby, for the dues and fees agreed upon and paid, the members receive the medical treatment to be given by the association at the expense of the common fund thus accumulated. Such a society, whether incorporated or not, is not doing charitable work, but is merely rendering the consideration agreed upon in the contract between it and its members.

"There is another reason which forbids the conclusion that the respondent is a charitable society or corporation, even if its funds come not solely from the charges against its members and patrons. One of the essential features of a charitable use is that it shall be for the public benefit, either for the entire public or for some particular class of persons, indefinite in number, who constitute a part of the public. The persons to be benefited must consist of 'the general public or some class of the general public indefinite as to names and numbers. . . . '

"Even though Statutes 1850, p. 373, Sec. 175, be construed not to authorize the formation of any corporation

other than a charitable or benevolent one, it does not necessarily follow that all corporations organized under the act are, ipso facto, charitable or benevolent associations or corporations. Corporations of the character named may be either charitable or not, according to the power they have under the provisions of their articles and by-laws, and their purposes as therein specified."[12]

§ 20. **Charity Hospital Not a Business.** The case of Lawrence vs. Nisson[13] came before the Supreme Court of North Carolina, the object of the proceeding being to compel the defendants to issue to plaintiff a building permit for the erection of a private hospital upon a certain lot within the corporate limits of the city of Winston-Salem. "The establishment and conduct of hospitals for pay is now a recognized and established business. It is rare to find a city or town of any size without such institution. These hospitals are generally established, owned, and conducted by members of the medical profession for their own convenience and profit. No one is engaged in the business of establishing and conducting hospitals for charity. There are public hospitals in large cities with charity wards as well as pay wards in them, established and conducted by the municipal government or by trustees of some endowment fund donated by philanthropy; but the establishment of charitable hospitals is in no sense a recognized business. For this reason it is probable that the board of aldermen did not consider it necessary or important to embrace charity hospitals within the ordinance, deeming the erection of one by some local philanthropy a remote possibility, which could be attended to in the future if application for a building permit should be made."

§ 21. **Industrial Hospitals.** The status of hospitals maintained by industrial concerns for their employees, either with or without cooperative support of employees, involves the question whether such hospitals are charitable institutions. The weight of opinion seems to be at this time in favor of their charitable character.

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[12] 1920, In re Dol's Estate, 187 Pac. 428.

[13] 1917, 91 S. E. 1036.

In the case of Union Pacific Railway Company vs. Artist, the Court says that "The test which determines whether such an enterprise is charitable or otherwise is its purpose. If its purpose is to make profit, it is not a charitable enterprise. If it is to heal the sick and relieve the suffering, without hope or purpose of getting gain from its operation, it is charitable. Tried by this test, the hospitals and medical department of this company are a great public charity. . . . There is no evidence that there ever was any purpose or intention on the part of the company of making any profit through the operation of this hospital or the supplying of these physicians. The sole purpose that this record discloses was to relieve these employees from sickness and suffering. . . . If it be urged that this gift may have been prompted by an ulterior and selfish motive—that the company may have thought that the operation of its medical department would protect it from excessive claims for injuries resulting to its servants—the answer is that the true test of a public charity is not the motive of the donor, but the purpose to which the money given is to be applied."[14]

Another similar case was that of Richardson vs. Carbon Hill Coal Company which was decided by the Superior Court of Washington.[15]

The corporation owned and operated certain coal mines, and was also the owner of a narrow gauge railroad, which it constructed and used for the purpose of transporting its coal to a station.

"It appears that the appellant corporation," said the Court, "in conducting its business, usually employed several hundred men. And the proof shows that it was the custom of the paymaster of the company to retain one dollar per month from the wages of each employee, and that the money so realized was kept as a special fund for the payment of the expenses of the hospital and the salary of the physician employed to treat sick and disabled employees and their families, and was disbursed by him whenever required for

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[14] 1894, Union Pac. Ry. Co. vs. Artist, 60 Fed. 365.

[15] 1895, 10 Wash. 651, 39 Pac. 95.

those purposes. None of the money was used by the company in transacting its business, nor did it in any way profit from it. The hospital," the Court declared, "was maintained and the physician provided for the sole purpose of relieving sick and injured employees without expense to them, and without any intention on the part of the company of making profit out of the undertaking. It was, therefore, a charitable institution, and it was supported by the contributions of employees, and carried on in their interests."[16]

Likewise the decision in Eighmy vs. Union Pacific Railway Co.,[17] declared by the Supreme Court of Iowa, states that, "It does not appear that the defendant was under any obligation by contract to furnish surgical and hospital accommodations for its injured employees, and, so far as is shown, its doing so was wholly voluntary. Its employees were under no obligation to avail themselves of facilities for treatment offered, and paid nothing for them when accepted. That the defendant maintained its medical department for its own advantages, and not for charitable purposes only, may be presumed, but does not alter what appears to be the fact, that it was not maintained to discharge any statutory or contractual obligation."[18]

To the opposite effect on the question of the charitable character of such an institution was the decision in the case of Arkansas Midland R. Co. et al. vs. Pearson,[19] decided by the Supreme Court of Arkansas. The Court said: "It is insisted by the appellant that it was not maintaining its hospital department and employing physicians with the expectation of deriving any gain or profit therefrom. . . . It could not be said to be conducted as a charity, for only those employees who had contributed the fees deducted from their wages for its maintenance were entitled to enter there for treatment, and all the physicians and employees required to maintain and operate it were paid from such fund. Nor can

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16 1895, Same, 10 Wash. 651, 39 Pac. 95.

17 1895, 93 Iowa 538, 61 N. W. 1056.

18 See also, 1891, O'Brien vs. Steamship Co. (Mass.), 154 Mass. 272, 28 N. E. 266.

19 1911, 97 Ark. 399, 135 S. W. 917.

it be said to have been administered by the railroad company out of pure philanthropy, since it may have had some benefit therefrom in decrease of amount of damages for injuries caused in the operation of the road, and better and more efficient service to the company of its employees because of its maintenance.'' The Court reversed the judgment because the defendant was a mere trustee to administer the hospital fund and not liable for the negligence of servants, when ordinary and reasonable care was used in their selection.

Note: The foregoing cases affecting industrial hospitals were decided before the advent of workmen's compensation laws, which placed in most states the legal duty upon the employer to provide medical and hospital care for injured employees. If the employer provides his own dispensary or hospital, is it a charitable institution? Would it be exempt from liability for the negligent acts of its assistants against employees? This question is yet to be determined by the courts.

CHAPTER II

THE INCORPORATION OF PRIVATE CHARITABLE HOSPITALS

THE INCORPORATION OF HOSPITALS

§ 30. **Effects of Incorporation.** To incorporate in its legal use means "to form into a legal body, a body politic; to constitute into a corporation recognized by law as persons with special functions, rights, and duties. . . ." The word incorporated means united into one body.[1] There will be treated in this chapter two steps, namely—organization and incorporation. Hospitals may be incorporated or unincorporated. They may also be incorporated by special or general act of the Legislature for profit or not for profit.

Unless required by statute, incorporation is not necessary for the establishment or maintenance of a private hospital or asylum. An unincorporated, private, eleemosynary hospital does not become a public, charitable institution upon receiving a charter from the State, and a charter cannot make a charity more or less public, only more permanent than it would otherwise be.[2] There are certain advantages which accrue under corporate management rather than under individual or copartnership arrangements which will be shown later.

No corporation can exist except by force of law and "incorporation is a form of expression of the sovereign political power of the State in the creation of a juristic person possessing such limited powers as may be granted" by the legislative branch of the state or national government.[3]

§ 31. **Kinds of Corporations.** There are two classes of corporations, public and private. Public corporations are merely governmental institutions created by law for the

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1 16 A. & E. Encyclopedia, 154.

2 Attorney General vs. Pearce, 2 Atk. 87.

3 Frost, Thomas Gold: A Treatise on the Incorporation and Organization of Corporations, Boston: Little, Brown, and Company, 4th Ed. 1913. p. 9, Sec. 1.

administration of the public affairs of the community such as states, counties, and municipalities. Public corporations are not voluntary associations and there is no contractual relation between the corporators who compose them. On the other hand, private corporations have no concern with public duties and are not bound to perform acts for its benefit, the only object being the personal emolument of the members.[4] There is, however, another distinction, that is, of business or organization for profit and non-profit-making or charitable concerns. The phrase "business corporation" includes all corporations engaged in business for profit, as distinguished from charitable and eleemosynary corporations.

§ 32. **Requirements for Incorporation.** For a long time corporations were organized by special acts of the Legislature but this practice is generally abandoned and the existence throughout the country of general incorporation acts has reversed the policy of granting special privileges. Legislative authority is essential to the creation of a corporation. Groups of people seeking to form a corporation must meet the legislative requirements,[5] and as is said in the case of Utley vs. Union Tool Co.,[6] "there is an obvious reason for making such organization by written articles of agreement a condition precedent to the exercise of corporate rights. It is the basis upon which all subsequent proceedings are to rest, and is designed to take the place of a charter or act of incorporation by which corporate rights and privileges are usually granted. If there were no such provisions, there would be an absence of any provision by which the right to exercise corporate powers could be definitely fixed and established, and there would be no means of ascertaining the rights of stockholders and persons dealing with such association."

§ 33. **Powers from Charter and State Laws.** The charter of an organization with the general laws of the state of its creation enumerating and limiting the powers of corporations of a given class constitute the measure of powers and the enumeration of them implies the exclusion of other powers

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4 Fletcher, Wm. Meade: A Treatise on the Incorporation and Management of Corporations in Illinois. Chicago: Callaghan, 1910. p. 5.

5 1874, Stowe vs. Flagg, 72 Ill. 397.

6 1858, 11 Gray (Mass.), 139.

not necessarily implied. No two states may unite in passing a legislative act, so that a corporation may not be created as of two states but must be of each or either.[7]

An incorporated hospital has all the powers conferred on it by the charter, or by the general law under which it is organized along with those powers incident or necessary to the execution of these express powers. They may sue and be sued, may grant, receive, and contract by their corporate name.[8]

A corporation is created by an instrument known first as the "charter" which originated in the English common law and referred to the specific grant of certain privileges given by the Crown to the subject. Later this came to be applied to the special legislative acts creating a corporation with exclusive purposes and powers. Then came the expressions "articles of incorporation," and "articles of association," "certificate of incorporation," "certificate of organization," and "petition for incorporation." The essence of a corporation may be said to consist of: 1. The capacity for perpetual succession under a special name and in an artificial form. 2. To take and grant property and contract obligations, sue and be sued by the corporate name as an individual. 3. To receive and enjoy corporate immunities.[9]

Under the circumstances it is impossible to enumerate with great detail the provisions of each state concerning the matter of incorporation, inasmuch as they are changed and altered to meet local needs and requirements.

§ 34. **Procedure for Incorporation.** The following steps may be enumerated as necessary to create a corporation: 1. The drafting of articles of incorporation. 2. The signing of these articles by the required number and variety of incorporators and the acknowledgment of these before an officer duly authorized to take such acknowledgments. 3. The filing and recording of these articles with the proper state or county officials after the payment of organization tax and filing and recording fees. 4. The organization of the corpora-

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7 Fletcher, p. 4; Frost, p. 10.

8 St. Barnabas Hospital vs. Minneapolis Electric Co., 60 Minn. 254, 70 N. W. 1126.

9 The Incorporation and Organization of Corporations, 4th Edition, 1913; Frost, p. 11.

tion ready for the transaction of business. 5. The necessary permit from state officials to transact business in the State.[10]

A hospital in some states as has been said, may be organized under a general or special act just as it may be incorporated or unincorporated. In Massachusetts, if an institution or group of individuals desiring to incorporate feel that they cannot do so under the general laws of the State, as shown by the general business corporation law, they are permitted to draw up their articles and apply to the Commissioner of Corporations for special charter, stating the reason for such application. If he feels the request justified and within the law, he is to attach a memorandum to the petition and refer the same to the General Court. These requests must be in by November 1 preceding the legislative session. It is unnecessary here to review the legislative procedure, the readings, the hearings before committees, etc. However, after these requests are passed by the General Court, they are incorporated with the Special Acts and published with the Acts and Resolves.

§ 35. **Partnership Without Incorporation.** Suppose, however, that an individual or group of individuals desire to establish a hospital or hospitals without incorporating. What is the method of procedure, and how is it accomplished? Incorporation, while a protection in law, is something of an expense which it may not be immediately desirable to incur. Hospitals are governed by general state and local laws, the specific grant for incorporation, and the rules and methods of procedure. Practically there are two ways in which persons can associate themselves for business purposes,—corporation and copartnership. The business corporation is created by a charter granted by the State and cannot be created by mere agreement among the members. The charter can only be obtained by following the forms prescribed by state laws. "A partnership is the result of a contract between two or more competent parties to combine their money, property, skill, or labor, for the transaction of some lawful business for profit. The contract may be express or implied. The business must be lawful, otherwise the law would not recog-

[10] Frost: The Incorporation and Organization of Corporations, 1913, 4th Edition, p. 12.

nize the combination as a partnership. The subject-matter must be some undertaking for gain, for if profit were not the object, the association would not be a partnership."[11]

So far as third parties are concerned, the mere representation that they are partners, or the passive acquiescence in such representation by others is sufficient. But between the parties themselves there are the following essential elements: a contract; parties competent to contract; capital or property; a community of control; a lawful business; and profit sharing as a motive. Each partner is an agent for the others in the transaction of anything within the scope of the business; each partner shares in the profit; if insolvent, each partner is personally liable for all the firm's obligations, etc.

§ 36. **Charitable Associations Not Partnerships.** Associations not for profit are not partnerships. They do not involve mutual agency nor yet partnership liability and are governed by rules entirely different from those governing partnerships. Sometimes business organizations called partnership associations are authorized as in Pennsylvania and Michigan, but they are neither partnerships nor corporations.[12] These unincorporated associations may make their own rules which must be observed.[13]

§ 37. **Unincorporated Charitable Associations.** Individuals acting in groups without a charter of incorporation may be associated either for or not for profit. Associations for profit are known as partnerships, which may be formal or informal, trusts or unassociated groups such as dealers through a common agent, tenants in common, etc. The nonprofit associations may be benefit societies, religious or professional societies, etc. Wrightington says the first is the law of partnerships, the second the law of trusts, the third the law of agency.[14]

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11 Conyngton on Partnership Relations, 1905, p. 13.

12 Conyngton on Partnership Relations, Ch. 1, 2, 3, 4, 5.

13 Members who authorize or ratify are liable whether or not they intended to become liable or understood the law (Lawler vs. Murphy, 58 Conn. 294, 313, 20 Atl. 457). If the plaintiff agreed that the members should not be individually bound, they are not liable (Heath vs. Goshen, 80 Mo. 310, 314). In equity members are held individually liable only after the joint assets are exhausted (Patch Mfg. Co. vs. Capeless, 79 Vt. 1, 63 Atl. 938). Wrightington: Unincorporated Associations, 1916, Sec. 64.

14 Wrightington: The Law of Unincorporated Associations and Similar Relations, 1916. Little, Brown & Co.

It has been held in Oklahoma that an unincorporated voluntary organization is not a partnership or corporation.[15]

§ 38. **Advantages of Incorporation.** The advantages which may accrue from conducting business under corporate management rather than individual or copartnership arrangements are quite numerous.

1. The element of perpetuity is an important consideration to any continuing enterprise and it is desirable so far as possible to avoid the inconvenience and delay arising from unavoidable or unforeseen difficulties. Stability and permanence are characteristic features of a corporation and the organization endures until it is terminated by:

a. Voluntary dissolution, usually by unanimous consent of the stockholders.

b. Expiration of the period for which organized or formed (20 to 50 years and sometimes perpetual).

c. Judicial proceedings.

d. Forfeiture of the charter.

2. The limitation on liability. In the case of non-profit-making concerns this question does not arise because usually no stock is issued; where stock is issued the stockholder's liability is limited to a definite amount.[16]

3. The corporation has a distinct legal entity, entirely apart from its membership, so that it may sue and be sued, contract and be contracted with under the corporate name; in other words, it has an individual existence of its own, whereas in a partnership or firm, every member must be made a party to all actions at law either by or against the firm.

4. In a corporation the business is managed by an elected board of directors, acting through its officers and agents. This board has regular meetings, keeps records, makes reports, and governs the institution in an orderly, well defined manner.

5. The question of stockholding and desirability from an investor's point of view will not be developed here because benevolent hospitals do not issue stock and do not declare dividends and profits as do ordinary corporations.

§ 39. **Disadvantages of Incorporation.** The disadvan-

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[15] 22 Okla. 405, 98 Pac. 897.

[16] Thomas: Corporate Organization and Management, p. 19.

tage of corporate organization may be summarized briefly as relating to taxation and reports. The non-profit-making or charitable institutions are favored, and as a rule exempt from taxation, but reports are usually required of all.

Legislative power is essential to corporation[17] and incorporators cannot come together and agree to become a corporation without conforming to legislative requirements.[18]

It is usual in the articles of incorporation to designate the duration of corporate existence; the number and par value of shares; the names of the first or temporary board of directors, or in some states only the number of directors are to be inserted. Some require the statement of the amount of stock subscription, the amount of capital stock paid in, and the amount of capital stock with which the corporation will begin business. The date of the annual meeting may be specified and provisions regulating the internal affairs of the corporation may be included in the articles. If stockholders are to be protected from personal liability for corporate debts, there must be inserted in the articles of incorporation of companies organized under the laws of Arizona, Delaware, Iowa, Kentucky, and Utah, provision specifically exempting stockholders from such liability.

§ 40. **Steps in Creating a Business Corporation.** The following steps may be enumerated, then, briefly as necessary to the creation of a modern, business corporation:

1. Drafting the articles of incorporation.

2. Signing the articles by the requisite number of incorporators and acknowledging the same before an officer duly authorized to take such acknowledgments.

3. Filing and recording the articles with the proper state and county officials after the payment of the necessary organization tax and filing, recording fees.

4. Organization of the corporation ready for the transaction of business.

5. Securing the permit (if required) from state officials if necessary to transact business within the State.[19]

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17 McKinn vs. Odom, 8 Bland's Chancery 407.

18 1874, Stowe vs. Flagg, 72 Ill. 397; 1858, Utely Union Tool Company, 11 Gray (Mass.) 139.

19 Frost. The Incorporation and Organization of Corporations, 4th Edition, 1913. Carmody vs. Powers, 60 Mich. 26, 26 N. W. 80.

§ 41. **Incorporators: Definition and Qualifications.** An incorporator is one of the persons who by petition or by means of the execution of articles of incorporation makes the exercise of the supreme political power of the State in the creation of a corporation for the benefit of himself and associates and their successors in interest.[20]

The qualifications of the incorporators vary with the different states. Citizenship may or may not be necessary; and they must be of full age, and known persons.

§ 42. **The Corporation Name.** The corporation must have a name under which to do business.[1]

Some states require that the name be distinct from that of any existing domestic corporation or not so similar as to deceive or cause confusion. Connecticut, Delaware, Kentucky, Massachusetts, New York, Utah, and Virginia forbid the use of a name of a foreign corporation by a newly created domestic corporation.

The name is a part of the property of the institution, and the fraudulent use by another of a name so like it as to deceive the public and rob the business will be forbidden by equity.[2]

§ 43. **Corporate Purpose.** The specific declaration in the articles of incorporation of the nature of the business which the corporation is authorized to carry on, is known as the corporate purpose. It is important to specify these purposes and objects clearly to be of use to the State and the courts in interpreting and deciding the powers granted and conveyed. These purposes with the general laws measure the powers of the corporation. Generally speaking, a company may not incorporate for more than one purpose.

§ 44. **Corporate Powers.** The right or authority of a corporation to exercise certain prescribed powers designated in its instrument of creation is known as its corporate power.[3]

This is true of the express powers but not true of what is known as the common law powers or the incidental powers. Common law powers are those bestowed upon corporations

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[20] In re Lady Bryer Co., 1 Saw. 349; C. & N. Y. C. R. R. Co. vs. Owen, 32 Barb. (N. Y.) 616.

[1] 30 Ala. 650; also 137 Ill. 231, 28 N. E. 248.

[2] 66 S. W. 1032.

[3] 1879, Thomas vs. Company, 101 U. S. 71.

irrespective of statute or charter provisions. Frost[4] enumerates these powers as:

1. The right to use the corporate name.
2. The right to perpetual succession.
3. The right to acquire, hold and dispose of corporate property.
4. The right to appoint corporate officers and agents.
5. The right to establish by-laws for the government of the corporation, its officers, and members.
6. The right to sue and be sued.

These common law powers are usually enumerated or, as in Indiana,[5] the statute refers to them as common law powers, and then enumerates them.

Express powers are those granted to all corporations by statute, whether inserted in the charter or not; or those permitted by statute to such as may take advantage of them by reserving them in the charter. The first ipso facto became a part of the charter; the second are available only when specifically reserved or set forth in the articles.

An act or contract is said to be ultra vires when it is beyond the power of the corporation. Since the institution or corporation is a legal creation each act must be traceable to some specified power. Thus it has been held that an association organized for religious purposes cannot be exempt from the payment of taxes upon a hospital although the hospital is in itself a charitable purpose.[6] The conduct of such a hospital was not stated as a purpose of the organization and consequently was ultra vires.

It is impossible to quote here all laws governing the incorporation of hospitals which may be by general or special acts or by charter. We have here enumerated some of the legislation relating to the incorporation of charitable or non-profit-making institutions, outlining the general procedures and powers by states.

CHARITABLE OR NON-PROFIT-MAKING CONCERNS

§ 45. **Alabama.** The members of any church or religious or educational or benevolent society, desiring to become incor-

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4 P. 31, Sec. 9.
5 Sess. Laws, 1901, Ch. 127, Sec. 28.
6 Frost, p. 36, Sec. 17.

porated, are to elect not less than three, nor more than nine trustees. Incorporation is complete after the trustees have filed a certificate in the office of the judge of probate of the county in which the corporation is to exercise its functions, within thirty days after their election. The certificate is to state the corporate name selected, the names of trustees, and the length of time for which they were elected. Trustees are to subscribe and record the certificate.

The corporations under this article may hold real and personal property not exceeding $500,000; may receive property by gift or devise, holding it in conformity with conditions imposed by donor, and exercise other powers incident to private corporations. In legal proceedings the service of process and papers against the trustee is valid to bring corporation into court or for notice and the property to an amount not exceeding $2,000 is to be exempt from all state, county, and municipal taxation and licenses; but if used for any other purpose than legitimately pertains to the object of such society, it shall not be so exempt.

There is a forfeiture of the charter for gaming. The institution may increase its membership, also alter and amend the charter.

The declaration is to be verified by the affidavit of one or more signers and the judge of probate is to issue the certificate empowering the corporation to do business under the new name. Amendments may be made and the certificate and declaration are to be recorded in the office of the judge of probate in and from which the same are filed and issued.[7]

§ 46. **Arizona.** Corporations not for profit may hold such property as is necessary for the business and objects of the association. The directors are to make a full annual report to the members. There is to be a mortgage or sale of property only by leave of the Court. These corporations may in their by-laws, ordinances, constitutions, or articles of incorporation, specify qualifications and conditions of membership; fees; expulsion; amount of indebtedness, etc.

These associations are formed by filing a verified certificate in the office of the county recorder of the county in which

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[7] Alabama Domestic Corporation Laws, 1908, Art. 18, p. 74, Secs. 3613-3626.

the principal place of business is situated and with the Corporation Commissioner; such certificate to state the general objects of the association, the principal place of business, the names of officers for the first three months, to be verified and signed by them.

This corporation may sue and be sued, and may loan such funds as it may have on hand, and may own sufficient real estate for its business purposes, etc.[8]

§ 47. **Arkansas.** Any association organized for benevolent purposes, or for the promotion of bodily or mental health . . . consisting of not less than three persons may be constituted and declared a body politic.

The constitution or articles of association and the list of all members, together with a petition to the Court for a certificate of incorporation is to be filed with the clerk of the circuit court and the recorder for the proper county. The form of the certificates of incorporation is specified.

All associations incorporated under the provisions of the act are to file a copy of all amendments to their constitution or articles of association, certified as such, with the clerk of court, within sixty days after passage of the act.

The first meeting is to be held as prescribed in the constitution or articles of incorporation.

The corporation has power to raise money in the manner agreed upon in the constitution or articles and the forms of government or management are to be such as are there prescribed. They have power to sue and be sued, to buy, hold, and sell property real and personal and of otherwise carrying out the purposes and objects of their organization as possessed by other corporations, and which are necessary to their efficient management and the promotion of their purposes.

The clerk or secretary is to keep a fair record of the proceedings open to inspection of members.[9]

§ 48. **California.** Any number of persons, associated together for any lawful purpose other than pecuniary profit, may incorporate and may in accordance with the rules of the

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8 Rev. Stats. 1913, p. 756, see 2197 et seq. C. 41 Laws 1903.

9 Digest of Stats., 1921. Crawford & Moses. C. 38, p. 635, Sec. 178, et. seq.

association elect directors not less than three nor more than thirty-one.

Such a corporation may hold the property necessary for its business and the objects of the association, and may transact all business relative thereto. The directors are to make a full report of all property annually to members. Before selling any property a corporation must satisfy the superior court of the county that such sale is for its interests.

Non-profit corporations in their by-laws may provide the qualifications of members; fees; election of directors; manner of voting; expulsion; the organization of the board; and the indebtedness. They are to have a continuous existence during the time for which they are organized with the right to receive and take any gift, bequest, devise, or conveyance of property, etc.

A head office is to be maintained at a place set forth in articles but annual meeting may be held elsewhere. They may consolidate with other corporations and the procedure is stated.

Corporations other than counties, municipal corporations, and corporations formed for hospital purposes cannot take under a will, unless expressly authorized by statute.[10]

Any charitable, religious, benevolent, or educational society, corporation, institution, or association (pecuniary profit not being its object or purpose), may receive grants of property on condition to pay an annuity after it has been in active operation for at least ten years and which has obtained from the Insurance Commissioner a certificate of authority so to do. On failure so to pay the Commissioner may revoke such permit but the society . . . shall be otherwise exempt from the insurance laws of the State.[11]

A corporation organized under the laws of the State is authorized to amend the articles, change the place of business, extend the duration, change the amount of capital, etc. Such amended articles are to be filed with the Secretary of State.[12]

§ 49. **Colorado.** Any benevolent society or association

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[10] California Code, 1915 (Deering) (Civil) Title VII, p. 278, Sec. 593, et seq.

[11] California Stats. 1919, Ch. 416, p. 822.

[12] Stats. 1921, C. 134, p. 134, amending Civil Code, Sec. 362, etc.

may become incorporated by electing or incorporating two or more members as directors or trustees and may adopt a corporate name, and upon the filing of affidavit shall remain a body politic and corporate.

The directors are to adopt the necessary by-laws unless the corporation shall in its articles of incorporation reserve the right to make such by-laws.

Any property vests in the corporation, which may take, hold and convey property, amend articles, etc. A notice is to be given of any meeting to change by-laws or articles. The vote necessary to amend is specified as is also a quorum of directors and the certificate of amendment is to be subscribed and sworn to by officers to be filed with the Secretary of State.

§ 50. **Connecticut.** Three or more persons may associate to form a corporation without capital stock, to promote or carry out any lawful purpose, other than that of a mercantile or manufacturing business, or business conducted solely for profit, by signing and acknowledging before any officer authorized to take acknowledgments of deeds and filing in the office of the Secretary of State a certificate stating: (1) That they do so associate; (2) the purpose or object of the corporation; (3) the town in this State in which the corporation is to be located. In this certificate may be included any other lawful provisions for the regulation of the affairs of the corporation and the definition of its powers and the powers of its officers, directors, and incorporators. This is to be examined and approved by the Secretary of State. A certified copy is to be recorded in the office of the town clerk in the town where such corporation is to be located. There is the power to mortgage real and personal estate; issue promissory notes; receive property by devise or bequest and hold the same, so far as such property may be necessary or proper to enable such corporation to carry out its purposes. It is limited to transactions in the State and amendment is made by three-fourths vote of incorporators, their associates, and successors. The amended articles are to be filed, approved, and recorded as the original.[14]

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[13] Rev. Stats. 1908, C. 30, p. 404, Sec. 1018, et seq.

[14] R. S. 1918, C. 188, part V, Sec. 3534, et seq. Rev. 1902, Sec. 3937; 1903, C. 194. 1911, C. 56; 1917, C. 27, 1919, C. 65.

The voluntary dissolution of corporations without capital stock is provided; the winding up of business; the application to the superior court; creditors are not to interfere with the control of property; and certificates concerning dissolution are to be issued.[15]

§ 51. **Delaware.** The conditions of membership and the fact that such corporation desires to have capital stock shall be stated. The name and residence of original subscribers to the capital stock or corporations, the time of existence, the regulation of business, the conduct of affairs, etc., are to be stated.

A certification signed and sealed by each of the original subscribers or corporators and sworn to before an officer authorized to acknowledge deeds, is to be filed in the office of the Secretary of State who certifies the same to the recorder of the county where the principal office is to be located. The corporate existence begins with the filing of these articles.

The signers of this certificate are to direct the management until a board of directors is elected; their qualifications, powers, classes, executive committee, officers, vacancies, first meeting, and by-laws are to be stated.

Any amendment of the charter of incorporation is to be filed with the Secretary of State and signed by the incorporators; it is to be recorded and a certified copy sent to the county recorder. The procedure for such amendment is specified.[16]

§ 52. **Florida.** Any five or more persons wishing to form a religious society, benevolent or charitable association, scientific organization, or institution of learning, may become incorporated. They are to present to the judge of the circuit court for the proper county a proposed charter subscribed by the intended incorporators, which shall set forth:

1. Name of corporation and place to be located.
2. General nature and object.
3. Qualifications of members and the manner of their admission.
4. Term for which it is to exist.
5. Names and residence of the subscribers.
6. By what officers the affairs of the corporation are to

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[15] Same, Sec. 3538.

[16] General Corporation Law, 1899, amended 1915, 1917, etc.

be managed, and the time at which they will be elected or appointed.

7. The names of temporary officers.

8. By whom the by-laws are to be made, altered, or rescinded.

9. The highest amount of indebtedness and liability, never greater than two-thirds of the value of the property.

10. The amount in value of real estate subject to the approval of the circuit judge.

The proposed charter is to be acknowledged under oath. The notice of the application is to be made in one newspaper for four weeks in the proper county. The judge is to approve and endorse, then it is to be recorded in the office of the clerk of the circuit court. A copy of the record certified by the clerk is to be an evidence of incorporation.[17]

§ 53. **Georgia.** Library and other literary, charitable, or social organizations which have no capital stock and which are not organized for individual or pecuniary gain, may be incorporated. In cases where it is the design to extend operations and hold property in different counties, without any principal place of business, it is lawful for the petition to be filed in, and the order of incorporation to be granted by, the superior court of any county of the State and the said county is deemed the residence thereof. This legal residence may be changed. The group may act in their corporate capacity as trustees to administer and carry into effect any charitable trust.[18]

The superior court, upon the petition of one or more discreet and proper persons, showing that a school, etc., has been, or is about to be established in the county where such court is sitting, and asking for corporate authority to enforce good order, receive donations, make purchases, and effect all alienations of realty and personalty, not for the purpose of trade and profit, but for promoting the general design of such institution, and to look after the general interest of such establishment, may grant such person or persons and their legal successors such corporate powers as may be suit-

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17 Florida Gen. Stats. 1920, Sec. 4499, et seq. Acts 1893, C. 4231; 1903, C. 5520; 1915, C. 6883.

18 Georgia Code 1911, Sec. 2836; Acts 1878-9, p. 166, Sec. 1993; Acts 1876, p. 34, Sec. 2823; Acts 1889, p. 161, etc.

able and not inconsistent with the laws of this State. On petition they may amend their charter. The cost of recording is to be paid by petitioners and a certified copy under seal of court, is sufficient evidence of the powers and privileges granted. The corporation may be revived at any time within ten years after the expiration of the charter by the superior court on application, etc. Deeds or conveyances are to be confirmed. Trustees are subject to the wishes of the society and the names of officers are to be recorded. This Act is applicable to all societies, whether social, charitable, secret, etc. They are entitled to receive property, sue and be sued, contract and be contracted with, etc.[19]

§ 54. **Idaho.** Any number of persons associated together for any purpose, where pecuniary profit is not their object, may in accordance with the rules, regulations, or discipline of such association, elect directors, the number thereof not to be less than three nor more than thirty-five, and may incorporate themselves: provided the management of the real estate is under the control of one board, and the promotion, operation, and maintenance of such corporation, under the control of another board, then such corporation, when incorporated, may elect both such boards, the former to consist of not less than three nor more than five, and the latter to consist of not less than five nor more than thirty-five, in accordance with the usual customs or rules of such corporation.

The articles of incorporation must set forth the holding of an election for directors, the time and place where same was held, that a majority were present and voted, and the result thereof is to be verified by the presiding officer or secretary of the meeting. A notice of election is to be given, etc. Amendment of articles may be made at any regular meeting by vote of a majority of a quorum attending the meeting provided previous notice is given. A verified certificate is to be filed by president or secretary in duplicate, and one is to be filed in the office of the county recorder and one in the office of the Secretary of State, as in case of the original articles.

The corporation may hold property and transact all busi-

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[19] Code 1911, Sec. 2824 et seq., Acts 1884-5, p. 58; 1889, p. 182; 1805, Sec. 3778; 1885-6, p. 272, etc.

ness relative thereto but no more than is necessary for the business and objects of the association. The title to such property vests in the corporation, its power to be exercised as provided in the by-laws.

By-laws may provide: the qualification of members, election, etc.[20]

Incorporations may be formed for acquiring, holding, and disposing of church or religious society property, for the benefit of religion, for works of charity, etc. The person in whom the title has vested may make and subscribe written articles of incorporation in duplicate, acknowledge the same and file one with the Secretary of State, retaining the other. These articles are to specify: the name, object, estimated value of property, and the title of person making such articles.

The powers of corporation sole are given. After the making and filing of the record of the articles of incorporation, the group is deemed a body politic and corporation sole with continual, perpetual succession, which may acquire and possess by gift, bequest, devise, or purchase, with the power to hold and maintain property—real, personal, and mixed—and to grant, sell, convey, rent, or otherwise dispose of the same as may be necessary to carry on and promote the objects of the corporation; it has authority to borrow money, to give written obligations therefor, etc. It has the power to contract and be contracted with, sue and be sued, plead and be impleaded in all courts of justice, and to have and use a common seal, the imprint of the same to be filed in the office of the Secretary of State. The deeds and instruments are to be sealed with same. The successor in office is vested with the title to property and such title is in abeyance pending appointment following vacancy.[1]

Institutions of learning may be founded by any number of persons not less than five as provided in the case of private corporations. The articles of incorporation are to set forth: the name, purpose, place, number, names and addresses of trustees or directors. A certificate from the Secretary of State is to be given when articles are filed, and such articles

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[20] Idaho Comp. Stats. 1919, C. 196, Religious, Social and Benevolent corporations, Sec. 4870, et. seq.

[1] Idaho Comp. Stats. 1919, Corporations Sole, Sec. 4879, et seq.; 1895, C. 4; 1899, p. 236; 1903, p. 302, etc.

may be amended to include the power of perpetual succession, to sue and be sued, etc. Religious tests are prohibited. Corporations for private gain are prohibited. There must be from three to eighteen directors, the manner of election and powers of whom are to be specified.[2]

§ 55. **Illinois.** Societies, corporations, and associations not for pecuniary profit may be formed by three or more persons, United States citizens, who shall desire to associate themselves for any lawful purpose, other than for pecuniary profit, and who may make, sign, and acknowledge the same and file them in the office of the Secretary of State, stating their title in English, the location of the office by street and number, the particular business or object for which formed, the number of trustees, their names and addresses. The Secretary of State is to issue a certificate of organization which is to be recorded by the county recorder of deeds. Their powers are specified to sue and be sued, etc.[3]

§ 56. **Indiana.** Any number of persons, not less than three, may voluntarily associate themselves by written articles of association, signed and acknowledged by each person who may be a member at the time of the organization, specifying: the corporate name; the amount of capital stock if organized for profit; the object of association; the proposed plan of business; the principal place of business; the name and residence of each incorporating member; the term of existence not to exceed fifty years; a description of the corporate seal; the manner of election or the appointment of directors and officers; and the number of trustees.

Such association may be formed: to establish hospitals for the treatment of the sick, wounded, or injured persons, and for the care of the infirm, and schools for the education and training of nurses, with a capital stock of not less than $10,000, with the power to make contracts not to exceed one year for the treatment of existing or future illness or injuries of sick and injured persons, and to purchase and hold real estate, and convey the same, and to receive donations, devises,

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2 Comp. Stats. 1919, C. 97, Sec. 1893, p. 14; 1899, p. 169.

3 Rev. Stats. 1919 (Hurds), p. 748, C. 32, Corporations not for pecuniary profit, Sec. 291, 1871-2 as amended, L. 1919, p. 365.

and bequests of real and personal property for the use and benefit of such associations.[4]

Any number of voluntary associations, the members of which are residents of the county where such voluntary association is formed, may form a state association by each county association electing delegates who meet and organize by the election of a president and secretary, adopt a seal, etc. The constitution is to be filed in the recorder's office of Marion County.

The articles of association are to be presented first to the Secretary of State for filing with a statement of the plan for doing business, etc. A duplicate copy of certificate is to be filed in the recorder's office. Such corporation has the right to sue and be sued; borrow money; rent, lease, sell, and hold real estate and personal property. The constitution and by-laws are to be filed in the office of the State Auditor who has the power to examine the business.[5]

§ 57. **Iowa.** Three or more persons of full age, a majority being citizens of the State, may incorporate to establish organizations of a benevolent, charitable, or scientific character by signing, acknowledging, and filing for record with the county recorder where the principal place of business is located, articles of incorporation, stating the name, not to be same as any existing corporation, business, or objects; the number of trustees, etc., and the names thereof for the first year. Thereafter it becomes a body corporate, may sue and be sued, have a common seal, take gifts, and make by-laws. The corporation may endure fifty years unless dissolved sooner by a three-fourths vote of the members, by the General Assembly, or by operation of law. No dividends or distributions of property are permitted among the stockholders until dissolution. An annual election of trustees is to be held, by-laws formulated, etc.

The power of the trustees is specified, and property may be held in trust.[6]

§ 58. **Kansas.** Private corporations may be created by the voluntary association of five or more persons for the

4 As amended, Acts 1907, p. 276, Subd. 21.

5 Indiana Voluntary Assns. approved March 9, 1901, amended 1903, 1907, 1909, 1911, 1913, 1919. Burns, 1914, Anno. Stats., Secs. 4286, 4287, 4312, et seq.

6 Iowa Supp. 1913, Sec. 1642.

establishment, support, and maintenance of private hospitals and sanatoriums.[7]

Any charitable association other than colleges, universities, etc., may by the consent of a majority of its members become bodies corporate by filing the charter as required, electing directors or trustees, and performing such things as are directed in the case of other corporations. When so organized they have power to make by-laws, etc. The charter is to state the value of goods, chattels, lands, rights, and credits owned, if the institution does not have capital stock, otherwise a statement of the amount of capital stock or the amount of each share. They have the power to contract, sue and be sued, etc. If proposing to solicit in more than one county, a certified copy of the charter must be filed with the Secretary of State. Before soliciting, a certificate must be obtained from the State Board of Control.[8]

§ 59. **Kentucky.** Any number of persons may associate to form a corporation, society, or association, having no capital stock, for religious, charitable, educational, or any other lawful purpose, from which no private, pecuniary profit is to be derived. Such persons shall sign articles of incorporation and file them in the office of the Secretary of State and record them in the county clerk's office of the county where the principal place of business is to be located. The articles are to state the name and object of the association and such other facts as signers deem proper to mention.

Such association then becomes a body corporate and politic with the power to sue and be sued; contract; use a common seal; receive and hold property, real and personal, by purchase, gift, or devise, and may sell the same unless such property is received for some special purpose. They may adopt such rules for government as are not inconsistent with the law, and such as the directors may deem proper, but the corporation is not to be operated or managed for private gain, nor is it to engage in any plan or scheme of banking or insurance.

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7 L. 1907, C. 140, Sec. 2, as amended by L. 1911, C. 125, Sec. 1, as amended by L. 1915, C. 157, Sec. 1 (Kansas G. S. 1915, C. 23, Art. 2, p. 438, Corporations, Sec. 2099).

8 G. S. 1915, C. 23, Art. 17, Religious, charitable and other corporations, Sec. 2345; G. S. 1868, C. 23, as amended by L. 1879, C. 89; L. 1899, C. 164, as amended L. 1909, C. 171; L. 1911, C. 132.

The corporation is subject to visitation from the Legislature.[9]

§ 60. **Louisiana.** Six or more persons of full age or duly emancipated may unite to form a corporation. They shall execute an authentic act in the English language, signed by each of the incorporators, stating: the name, purpose, location, the officers and their election, existence, names and post office addresses of the subscribers of the articles. This act is to be recorded in the office of the recorder of mortgages or the clerk of the court in the parish selected for domicile and when so recorded the group constitutes a body politic incorporated for the purposes and objects declared. The charter may be amended and recorded in the same manner as the original act.

Non-trading corporations are to become incorporated under this act which shall include those for scientific, charitable, or social purposes, and generally all corporations not designed to engage in trade or the exploitation of property rights and credits. They may base membership on dues, etc., such as is prescribed in the articles and may issue certificates of membership.

They have power to have and use a common seal, to sue and be sued, and to make rules, by-laws, and ordinances. They may hold property, gifts, bequests, and devises bequeathed, not more than $300,000. The meetings of the group must be at the domicile.

A religious or charitable corporation incorporated by the Legislature in a special act may change, alter, or amend its name, the number of directors, the time and manner of choosing officers, etc. Such change is to be recorded in the office of the parish recorder. When the district attorney refuses a required certificate, the persons may go to district court requiring him to show cause why same should not be amended.[10]

§ 61. **Maine.** When seven or more persons desire to be incorporated for any scientific, . . . charitable, educational, social, . . . moral, religious, or benevolent purpose, they may apply in writing to any justice of the peace

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9 Kentucky Corporation Laws, Jan. 1, 1919, C. 32, p. 40, Sec. 879, et seq.

10 Louisiana Rev. Stats., Marr's, 1915, Sec. 1406; see 1390 and and 1406.

in the county, who may issue his warrant, directed to one of said applicants, requiring him to call a meeting thereof at such time and place as the justice may appoint. Fourteen days' notice is to be given by newspaper, and a hearing is to be held, etc.

When assembled, these people may organize into a corporation and adopt a corporate name. Their powers are enumerated as: to have continual succession; to use a common seal; to elect officers; to adopt by-laws, etc.

A certificate setting forth the name and purposes of the corporation, the town where located, the names of officers, etc., is to be recorded in the registry of deeds and Secretary of State's office with the payment of fees.

The corporation may take and hold by purchase, gift, devise, or bequest, personal or real estate not exceeding in value $100,000, and may use and dispose thereof only for the purposes for which it was organized.

No corporation which is organized for charitable or benevolent purposes, shall sue any of its members for dues or contributions of any kind, or be sued by any member for any benefit or sum due him, but all such rights and benefits, dues, and liabilities, shall be regulated and enforced only in accordance with its by-laws. The use of the name of the State in the title is forbidden, under penalty of forfeiture of appropriation.

A protection is given to certain corporations or organizations in the use of names and emblems; also prior and exclusive use of certain names. Badges, buttons, etc., are not to be worn, or a name assumed, without authority, and the Court may issue an injunction restraining violation or impose a penalty.

Any corporation, board of trustees, unincorporated body or association, holding funds or property for any religious, moral, educational, or benevolent purpose, may transfer its property to any other corporate body or trustees existing for similar purposes.[11]

§ 62. **Maryland.** Three or more persons, at least one a citizen of the State, may sign and acknowledge a certificate

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11 C. 17, Sec. 34 (Corporations for literary, charitable, educational, and other purposes without capital stock. C. 62, Rev. Stats. as amended by C. 48, p. 139, of Public Laws, 1919, Sec. 1).

stating: the subscribers; the name; purposes; location; capital stock; number of trustees; and any provisions which may be reserved, for the purpose of defining, limiting, and regulating the powers of the corporation. This certificate is to be acknowledged before a justice of the peace and certified under seal to the clerk of the circuit or superior court. It is to be submitted to one of the judges and then certified to the State Tax Commissioner, who on payment of the fees, is to record the same and transmit the original certificate to the clerk of the circuit or superior court. General powers such as that of perpetual succession, etc., are specified. The organization, officers and directors, by-laws, meetings, voting, amendments, procedure, increase or reduction of stock consolidation and sale, duties and liabilities of directors, and dissolution are specified.[12]

The consolidation of corporations having no capital stock may be arranged provided a majority of the members consent. It is to be made upon the agreed terms of union and the certificates of such union are to be acknowledged and recorded as other certificates of incorporation. A limitation of holdings is provided but when the value of the property owned by any charitable or benevolent society or corporation is within limits prescribed, but increases in value, the society and corporation may continue to hold the property.[13]

§ 63. **Massachusetts.** Seven or more persons, a majority residents of the Commonwealth, may form a corporation for any educational, charitable, or religious purpose, for a medical purpose, etc.[14]

Their capital stock is not to exceed $500,000, and an agreement of such association without capital stock may omit any statement of amount and par value and number of shares.[15] The agreement is to state the corporate name, purpose, location, capital stock, and information about the first meeting. Otherwise such a group is to be formed as a corporation under sections 15-20, C. 110, that is corporations for profit q. v.

An investigation of the proposed association is to be

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12 Laws 1908, C. 240, p. 23.

13 Maryland Laws 1908 Ch. 240, p. 49.

14 As amended G. A. 1915, C. 213, p. 195.

15 As amended G. A. 1919, C. 333, p. 315, Sec. 11.

made by mayor or aldermen, and in Boston by the board of police. The application is to state a list of names of those applying for incorporation, their purpose, location, and other facts. The investigation is to ascertain whether engaged in illegal gaming, etc., and a report is to be made to the Secretary of the Commonwealth.

The corporation may prescribe by-laws, and the officers. It may hold real and personal property to an amount not exceeding $1,500,000, which shall be devoted to the purposes set forth in the articles. A change of purpose is permitted.[16]

Corporations otherwise organized may adopt the provisions of the act and present a certificate to the Commissioner of Corporations, etc. The form of the certificate of these organizations is to be issued and prescribed by the Secretary of the Commonwealth and is to be evidence of incorporation.

The procedure for a change of name is specified,[17] and the Commissioner may require information. There is a penalty for making false reports.[18]

A limitation of property to be owned by charitable and other corporations is fixed at $1,500,000, but this is not to limit the amount of real estate held by any corporation whose charter allows it to hold a greater amount,[19] $2,000,000, which shall be devoted to the purposes set forth in its charter or agreement of association, and the corporation may receive and hold in trust or otherwise, funds received by gifts or bequests to be devoted by it to such purposes. The corporation under a special act is not to acquire and hold real estate to an amount exceeding $2,000,000. This is not to be construed to limit corporations holding property under a special act.[20]

Whoever intends to present to the General Court a petition to establish or revive a corporation or to amend the charter, enlarge the powers or change the corporate purpose or name, must file his petition before November 1 with the Commissioner of Corporations and Taxation. This petition is to state why the object sought cannot be accomplished under the general laws; if for profit there is a fee of $25. The

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[16] Mass. Rev. Laws 1902, Ch. 125, p. 1210.
[17] G. A. 1915, C. 205, p. 188.
[18] Acts 1914, C. 661, p. 638.
[19] G. A. 1915, C. 209, p. 192.
[20] G. A. 1917, C. 45, p. 42.

Commissioner is to examine and attach memorandum concerning the same.[1]

§ 64. **Michigan.** The incorporation of benevolent societies may be completed when the articles of association are drawn and a copy filed with the county clerk and the Secretary of State. The corporation may purchase, receive, take, etc., real estate and personal property, invest certain funds, dispose of the proceeds, and make rules and regulations.[2]

Whenever there shall exist any hospital . . . or any other charitable institution in this State, the legal title to which and the land used in connection therewith has been conveyed to one or more persons in trust, for charitable purposes, and the care and management of which institution is intrusted to a board of control consisting of five or more persons appointed from one or more charitable, religious, or fraternal bodies, in pursuance of the provision contained in the deed conveying title, such board may become incorporated by executing and acknowledging duplicate articles of incorporation, one to be filed in the office of the Secretary of State, and one in the office of the county clerk. Upon such execution the board has power to sue and be sued, etc. The articles are to contain the name, location, term, objects, names of members of boards of control, their place of residence and the bodies by which appointed, the number of persons composing the board, elective offices, terms of membership and powers of boards of control. Gifts of moneys are to be invested in the class of securities specified in the bequest, etc. The method of the amendment of articles is specified.[3]

In all cases where lands or other propety amounting in value to $5,000 or upwards have been or shall be given, granted, devised, or bequeathed to one or more trustees for the purpose of founding or endowing a hospital . . . for the care or relief of indigent or other sick or infirm persons, and it shall, for the more effective and perfect administration of such trust be deemed expedient by such trustees to organize

1 Comp. Laws of 1922 (Cahill), General Corporation Act 175, Sec. 9053 (2) et seq. Acts 1920, C. 582, p. 595.

2 Mich. Comp. Laws, C. 206, p. 3857. Benevolent and Charitable Societies. Act 155; 1879, p. 148. An act to provide for the incorporation of boards of control of hospitals, asylums, homes for the care of indigent, aged, or infirm persons, or other charitable institutions. Mich. Comp. laws, C. 208, p. 3874, Art.; 1907, p. 407.

3 Comp. Stats. 1915, Sec. 10840, p. 3871; 1907, p. 407.

themselves as a corporation, then the trustees in whom such lands or property are for the time being vested, may become incorporated by executing under their hands and acknowledging duplicate articles of incorporation, one to be filed in the office of the Secretary of State, and one in the county clerk's office. Upon such execution they become a body politic and corporate for objects set forth in said articles and may sue and be sued, and take, hold, and convey real estate. The articles are to state the name and location, objects, names of trustees whereby incorporated, number of persons constituting a permanent board of trustees, the mode, time and place of election, and such other officers as may be deemed necessary, the time of the annual meeting, and a copy of the deed, will, etc., by which the original gift was made.

The affairs are to be managed by a board of trustees (three to thirty) chosen or appointed as fixed in the articles of incorporation, for a fixed term unless fixed by will. Officers are to be appointed by trustees who also make and alter by-laws. The corporation may by gift, grant, devise, or bequest, take, receive, and hold property provided that the corporation shall not hold any lands except such as shall be necessary for the direct and reasonable use, support, or convenience of its hospital or asylum, for a longer period than ten years. Funds are to be used for the purpose stated and invested as authorized by laws for savings bank or by loan or pledge on same. No loans are to be made to any trustee or servant.

A full report of the trustees is to be made to the Attorney General or the Legislature whenever required. Articles may be amended, a copy of same to be filed.[4]

§ 65. **Minnesota.** Any three or more persons or religious corporations may form a corporation for educational, scientific, medical, surgical, benevolent . . . purposes or for establishing, maintaining and operating clinical, pathological, medical, or surgical research laboratories. . . .[5]

They shall adopt and sign a certificate containing the name, general purpose, plan of operation, location, and the terms of admission to membership, capital stock, and officers

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[4] Comp. Stats. 1915, C. 208, p. 425.
3871, Sec. 10840; Art. 242; 1863, p.

[5] G. S. 1913, Sec. 6523.

They are to have the ordinary powers of corporations and may establish by-laws and regulations for the management of its affairs. They may in their corporate name be sued and sue. They may acquire by purchase, gift, grant, or devise and hold, use, and convey any real or personal property whatever, etc. No street, road, or alley is to be established, opened, or extended through or upon lands not exceeding ten acres in area upon which a hospital building incorporated as such, is situated, except with the consent of the managing board of such hospital.[6]

§ 66. **Mississippi.** Persons seeking to incorporate are to report to their organization on the prescribed form to be furnished by the Secretary of State.

Any religious society, consisting of members of any particular denomination or congregation, desiring to act as an organized body, may do so by associating together and electing or appointing from its membership any number of officers, trustees, or managers, by whatever name known for the purpose of managing the affairs of the society; and such society shall keep a record of its proceedings, organization, and election of officers. The society may sue and be sued, etc., may hold and own at any one place the following property specified and no other: house for place of worship, etc.[7]

§ 67. **Missouri.** Any number of persons, not less than three, who have associated themselves by articles of agreement in writing as an organization for benevolent purposes, may be consolidated into a corporation. Persons holding the offices of president, secretary, and treasurer, or other chief officers shall submit to the circuit court, the articles of agreement praying for a pro formo decree thereon. If the Court assents, this is to be entered as of record, a certified copy of which order is to be attached to the articles. An attorney may be appointed to examine and show cause as to why the petition should not be granted, there is to be a hearing, etc. These articles are to be recorded in the office of the recorder

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[6] Minn. Sess. Laws 1915, Chap. 185, p. 251. Amending Code, Sec. 6522.

[7] Code Hemingway 1917, Sec. 4110. **Note:** There is no mention of the creation and establishment of a hospital under this statute; it may apply only to religious organizations, but whether it would apply to religious organizations maintaining a hospital seems not to have been judicially determined.

of deeds of the county and then to be filed with the Secretary of State who issues a certified copy of such articles and certificates, etc.[8]

Any association formed for benevolent purposes, including any purely charitable society, hospital, asylum, . . . may become a body politic, and may amend its charter by submitting the proposed amendment to the circuit court. Dues may be collected, but over and beyond these no member is to be liable for debts. The association may receive and take, by deed or devise, in their corporate capacity, any property, real and personal, for the uses and purposes of such trust, and execute the trust. . . .

No association . . . for pecuniary profit in any form, nor any corporation having a capital stock divided into shares, shall be incorporated under this article. . . . The associations incorporated are to keep a record, make by-laws, may acquire property, etc.[9]

§ 68. **Montana.** Private corporations may be formed to support any benevolent or charitable undertaking. At any time any three or more persons who may desire to form a company for the purpose of carrying on any purpose mentioned must prepare, sign, acknowledge, and file articles of incorporation in the office of the county clerk of the county in which the principal business of the company is to be transacted, and a copy thereof certified by the county clerk must be sent to the Secretary of State who is to issue a certificate that the required statement of facts has been recorded in his office. The term "forty years" is provided unless it is otherwise stated; the name is to be distinctive.[10]

§ 69. **Nebraska.** Three or more persons who may desire to become incorporated for any charitable purpose may execute under their hands, and acknowledge one or more copies of the articles of agreement which are to be filed and recorded in the office of the Secretary of State. There is to be a record or certified copy of this in the county recorder's office. The act is to include only societies intended to assist those suffering from any disease, infirmity, or necessity. The

[8] Missouri Rev. Stats. 1919, Ch. 90, Art. 11.

[9] R. S. 1909, Sec. 3435 et seq.; 1919, R. S. 10271.

[10] Montana Session Laws 1909, Ch. 106, p. 146, amending code.

articles are to contain the name, location, duration, object, trustees, and conditions of membership. The affairs are to be managed by not less than three trustees, etc. No such corporation is to have the power to take or hold any real estate except such as may be necessary for any hospital or asylum under its control or for the transaction of its business, for a longer period than twenty-five years. The use and investment of funds is specified and a statement is to be made under oath when a report is required to be made to the attorney general.[11]

Hospitals organized and incorporated under general laws are not subject to any board of charity. They are to organize and draw up the articles of incorporation which are to be filed in the office of the Secretary of State and are to pay a fee on the authorized capital stock.[12]

§ 70. **Nevada.** In all cases where lands or any other property, amounting in value to $1,000 or more, have been or shall be given, granted, devised, or bequeathed to one or more trustees, or persons acting in the capacity of trustees for the purpose of founding or endowing a hospital, or other charitable asylum within this State, . . . and it shall be deemed expedient for such trustees to organize themselves as a corporation, they may become incorporated by executing under their hands and acknowledging in duplicate articles of incorporation, one to be filed in the office of the Secretary of State and one to be recorded in the county clerk's office. Thereupon trustees and successors are a body politic and corporate, may sue and be sued, take, hold, and convey real and personal estate, have a common seal, etc.

These articles are to contain: the name, location, period, objects, names of trustees whereby incorporated, the names of the permanent board, the mode of election, time, etc., such other officers as may be necessary, and the time of the annual meeting. The affairs are to be managed by a board of trustees of three to fifteen persons chosen as fixed in the articles, other officers to be chosen by the trustees, by-laws, etc. The board

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[11] Amended 1915, Ch. 15, p. 70; Articles to include names of persons associating; name of corporation and location; object, number of trustees; terms and conditions of membership. Nebraska Anno. Stats. 1911, Sec. 4155.

[12] Nebraska Letter Secy. of State, April 28, 1921.

may hold property only for the purposes for which it was incorporated, "provided that said corporation shall not hold any land except such as shall be necessary, for the direct and reasonable use or convenience of a hospital or asylum, for a longer period than ten years." The trustees are not to have compensation and the funds are to be used for the purposes stated in the articles. There are to be annual reports to the county commissioners.[13]

It shall be lawful for all beneficial, . . . charitable or scientific associations or societies, by such rules or methods as their rules, regulations, or discipline may direct, to appoint any number, three to fifty-one, as trustees or directors, to take charge of the estate or property belonging thereto and transact affairs. Upon the appointment or election of such trustees or directors, a certificate of such appointment, or election shall be executed by the person or persons making the appointment, or the judges holding the election, or the secretary of the association or society, stating the names of the trustees or directors. The name of the association or society is to be specified. The certificate is to be acknowledged by the person making the same, and is to be proved by the subscribing witness and recorded by the clerk of the county in which it is situated. They have the following powers: of common seal; the acceptance of gifts; to sue and be sued; have, lease, improve, and erect all houses or buildings necessary to carry out the objects of the society or association; and to perform all duties imposed on them by the regulations, rules, or discipline of such organization. A sale of real estate may be made on petition of the trustees to the Court and the real estate is not to exceed one block in any town or city or ten acres in the county; nor shall any portion thereof used for ordinary business purposes, and connected with the objects of such association or corporation or rented for profit, be exempted from taxation. The trustees are to make an annual report.[14]

§ 71. **New Hampshire.** Five or more persons of lawful age may associate together by articles of agreement to form a corporation: to promote any charitable . . . cause; or

[13] Revised Laws, 1912, Sec. 1390.

[14] Nevada Rev. Laws 1912, Sec. 1365, et seq.

for the establishment and maintenance of hospitals, homes for the aged and for invalids, and other charitable institutions.

The articles of association are to contain: the name; object; place of business; and the amount of capital stock if any. The articles are to be signed by the persons associated. The corporate name is not to be changed except by an act of the Legislature. These articles of agreement are to be recorded in the office of the town clerk and of the Secretary of State. The by-laws are to remain in force until changed.[15]

§ 72. **New Jersey.** Any five or more persons, societies, or associations of clubs who shall desire to associate themselves for any lawful purpose other than for pecuniary profit, may make, sign and acknowledge before any person authorized . . . and file in the office of the Secretary of State and record in the office of the clerk of the county in which the principal business of the corporation is to be conducted, a certificate in writing in which shall be stated the name or title by which such corporation is to be known; purpose; place where it is located; the number of trustees with not less than three provided. In case the purposes, objects, or business of the corporations are to be carried on in whole or in part outside the State, the corporation is to maintain an office in this State, with resident agent in charge thereof during business hours, upon whom process against said corporation may be served.[16]

The certificate may contain qualifications of officers and members. The corporate powers are to be perpetual succession, to sue and be sued, etc. The business is to be conducted by the trustees subject to the by-laws passed by the members; the trustees are to be elected by the members and hold office one year. The majority must be residents of this State. The president, secretary, and treasurer are to be chosen by the trustees unless the by-laws provide for their election by members.

Whenever the trustees, managers or directors shall be elected, a certificate under seal of the corporation giving the names of those elected and their term of office shall be filed in the office of the county clerk where the certificates were

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[15] N. H. P. S. 1901, Title 20, C. 147, p. 468.

[16] Amended P. L. 1902, p. 639.

filed. Vacancies are to be filled according to the by-laws and the names filed; fee, 25 cents.

Corporations under special or private acts may incorporate under this act, and associations may combine. The procedure is stated also for the dissolution of the corporation. The trustees may change, alter, or amend the certificate filed with the Secretary of State.[17]

Every corporation organized under the authority of the act to which this is a supplement, for the purpose of establishing, maintaining, and operating a school for the training, education, instruction, or preparation of persons to act as nurses of sick, injured, infirm, aged, idiotic, or insane persons, and operated in connection with or under the auspices of a public hospital of this State, is hereby authorized to confer the degree of Medical and Surgical Nurse upon any of its graduates under such rules and regulations as such corporation may prescribe; provided, that instruction be given in anatomy, physiology, hygiene, dietetics, and medical, surgical, obstetrical, and gynecological nursing.[18]

One act authorizes corporations organized for religious, educational, benevolent, or charitable purposes to take, hold, and convey property in trust.[19]

Corporations organized for religious, educational, charitable, or benevolent purposes, are authorized to take, hold, and convey real and personal property either as the absolute owners thereof or as trustees.[20]

Any hospital heretofore incorporated under any special or private law of this State, the members or stockholders of which have determined, or may hereinafter, upon a change of name of such hospital, . . . may accomplish such change by recording with the county clerk and Secretary of State certificate signed by the president and the secretary under corporate seal.[21]

Proceedings to effect certain changes in acts or certifi-

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17 1903, C. 229, may change the name. New Jersey, C. 181, Laws 1898. Associations not for pecuniary profit. Secretary of State. 1918.

18 New Jersey 1900 Laws, C. 49, Supp. act approved April 21, 1898. Comp. Stats., pp. 125-131.

19 N. J. Laws of 1901, C. 198.

20 N. J. P. L. 1903, C. 198.

21 N. J. Laws of 1919, C. 108, p. 259.

cates of incorporation and the organization of charitable and educational corporations are outlined by statute.[22]

§ 74. **New York.** Five or more persons may become a corporation for the purpose of erecting, establishing, or maintaining a hospital or infirmary . . . by making, acknowledging, and filing a certificate stating: the particular object for which the corporation is to be formed; the name; the location of the principal office; the number of directors, not less than three nor more than forty-eight; their names and places of residence; and the time for the annual meeting. The qualifications of members; systems of medical practice or treatment to be used or applied in such hospital, infirmary, dispensary, or home may be specified.

The written approval of the State Board of Charities is to be secured before the filing and of a justice of the Supreme Court of the district in which principal office is located.

On filing, the signers, associates, and successors become a corporation, in accordance with provisions of such certificate.[23]

§ 75. **North Carolina.** In all cases where a religious, educational, or charitable association has been formed prior to January 1st, 1894, and has since said date been acting as a corporation, exercising the powers and performing the duties of religious, educational, or charitable corporations as prescribed by the laws of this State, then such association shall be conclusively presumed to have been duly and regularly organized and existing as a corporation from and after said date, if otherwise valid, and hereby declared to be valid corporate acts: Provided, this act shall not apply to any pending litigation.[24]

A charitable . . . corporation not under the patronage or control of the State, whether organized under special act or general laws, may change its name, extend its corporate existence, change the manner in which its directors, trustees, or managers are elected or appointed, abolish present method of electing such officers and create a different method of

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[22] N. J. Laws of 1920, C. 135, p. 273, amending 1918. 3436, Sec. 130.

[23] N. Y. Consol. Laws 1909, p.

[24] Consol. Stats. 1919, Sec. 1125, Laws 1919, C. 137.

election, and generally reorganize the manner of conducting such corporation, and make any other amendment of its charter desired, in the following manner: The board of directors is to declare the amendment desirable, etc.[1]

§ 76. **North Dakota.** A corporation for religious, educational, benevolent, charitable or scientific purposes may be formed as a general corporation. There is to be an annual report of the trustees or directors on property, real and personal, including that which is held in trust. They have power to acquire and sell property, purchase it, etc. The by-laws are to provide the qualifications of members; the mode of election; the fees; contracting and limiting indebtedness, etc. The title to property vests in the successors in the trust. The corporation is not to acquire or hold real estate in this State of greater value than $200,000.[2]

§ 77. **Ohio.** A benevolent or charitable association incorporated by or under the laws, of which women may be trustees . . . may vest property in three male trustees to be appointed one by the common pleas court, one by the probate court, and one by vote of a majority of the members. The term of office is three years. There are specified powers, etc., none over the institution or affairs of the corporation, except in fiscal matters. Other benevolent or charitable associations may come within this provision.

Two or more charitable or benevolent associations may consolidate; the agreement, vote, etc., are outlined by statute.[3]

§ 78. **Oklahoma.** Persons associated together for religious, charitable, educational, benevolent, or scientific purposes may elect not less than three nor more than forty-one trustees or directors. Fees are specified.

Their articles must set forth: the name; purpose; place of principal business; term of existence; the number of directors or trustees; and the names and residences of those who are to serve until the election of such officers and their qualifications; if there is capital stock, the amount and the number of shares into which divided. The holding of election for trustees or directors is to be stated, the time and place the same

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1 Consol. Stats. 1919, Sec. 1132, et seq. Laws 1917, C. 62.

2 Comp. Laws 1913, Sec. 5005,

3 Ohio Code 1921—Throckmorton— Sec. 10033.

was held, and the result thereof, which facts must be verified by the officers conducting the election of their successors.

The right to hold property is limited to no more real property than may be reasonably necessary for the business and objects of the association. There is to be an annual report of the trustees or directors as to real and personal property, including property held in trust, and the condition of affairs is to be stated. The trustees may sell or mortgage property.

Such corporations may in their by-laws provide: the qualification of members; mode of election, and terms of membership; fees of admission; expulsion of members; amount of indebtedness.

The title to property vests in the successors in trust. The objects of expenditure and the powers of corporation may be specified.[4]

The following associations for benevolent and charitable purposes may become incorporated as provided in this article, to-wit: First, to establish and maintain hospitals and infirmaries for the cure of the sick and support of the aged and indigent, and asylums for orphans.

All railroad companies . . . or any association or corporation which have heretofore collected, are now collecting, or which may hereafter collect fees . . . for the purpose of providing or maintaining hospital service for such employees when sick or injured, shall upon the order of the Corporation Commission . . . provide adequate hospital facilities within the State . . . for their employees who may be injured or become sick.

The Corporation Commission may require reports as to the adequacy of hospital facilities.[5]

The use of a name by a given society is to be exclusive and the violation of this provision may be enjoined.[6]

§ 79. **Oregon.** Whenever any church, religious, benevolent, educational, scientific . . . or charitable society desires to incorporate without profit to the corporation or members thereof, three or more officers or trustees duly chosen, elected, or appointed, shall make and subscribe writ-

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4 Rev. Laws Ann. 1910, Sec. 1459, et seq.

5 Oklahoma Bunns. Supp. 1918, p. 197, C. 15, Art. XIV.

6 Oklahoma Corporation Laws. Secretary of State 1917, Art. XIV, p. 56.

ten articles of incorporation in triplicate, acknowledging same before some authorized officer and file one in the office of the Corporation Commission accompanied by filing fee of $5. Another copy is to be filed and recorded in the county clerk's office where the society is located; and the third is to be retained.

The articles are to state: the name; object; the value of the property; the title of officers making the articles and their postoffice addresses; the mode and time of election of their successors in office; the location of the church or society.

The powers of the group are defined: to sue and be sued, contract, etc. The power of eminent domain is given to all charitable corporations incorporated and organized under the laws of the State since July 1, 1896, for the purpose of conducting for public use hospitals without profit to the incorporators or to any persons interested therein . . . and which has had a part of its land and buildings condemned by the State of Oregon since the year 1915. Supplementary articles may be filed.[7]

All charitable corporations incorporated and organized under the laws of this State since July 1, 1896, for the purpose of conducting for public use hospitals without profit to the corporators or any persons interested therein, actually engaged in the conduct of any such institution, and which has had a part of its land and buildings condemned by the State . . . since the year 1915, shall have the right to exercise the power of eminent domain for the purpose of acquiring real property or any interest therein, necessary for the use of such institution. The power is to be exercised as provided by law.[8]

Corporations organized under the general laws may transact a hospital association business, i. e., contracting or agreeing with individuals "for the furnishing of medical or surgical treatment, nursing, hospital service, ambulance service . . . or other necessary services contingent upon sickness, accident, or death. . . . "

This provision is not to apply to lodges, charitable, fraternal, or religious societies. Before being authorized to

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7 Stats. 1920 (Olson), Sec. 6998, et seq.

8 Stats. 1920 (Olson), Sec. 7060, p. 2801; Oregon Laws 1919, C. 437.

transact business the association is to have paid up capital of $5,000 invested as prescribed for domestic insurance companies and bonds or securities for $10,000 approved by the Insurance Commission. They must have a certificate from the Insurance Commission and pay a fee of $25. Hospitals have three months in which to comply with the law. They are subject to examination by the Insurance Commissioner the same as domestic corporations and are to file an annual report.

The agents of the hospital associations are to be licensed in the same manner and have the right of appeal for the revocation of their license as insurance companies.

The Insurance Commissioner is to issue a certificate authorizing corporation or firm to transact business.[9]

§ 80. **Pennsylvania.** Whenever an application for the charter of a hospital is made in which indigent persons are treated or to be treated or maintained in whole or in part at public expense, an application for the amendment of the charter is to be filed in the Court of Common Pleas. A certified copy is to be forwarded to the Board of Public Charities by prothonotary. Thereupon the Board shall advise the Court whether the needs of the community in which the work is to be carried on, require the incorporation of such a hospital or the amendment thereof, with the reasons for the conclusion of the Board. The Court shall not approve unless it finds that the incorporation or amendment is required by the needs of the community, but the recommendations of the Board of Public Charities as to such necessity shall not be conclusive upon the Court.

The trustees of hospitals and asylums, under the care and control of this Commonwealth, shall, for the purposes for which such trustees have been or shall be appointed, be endowed under their legal title with corporate powers and be subject to corporate obligations with the right to sue and be subject to suit as corporations, under the general laws of the Commonwealth. Hospitals are to be undenominational and are to report to the Board of Public Charities. This is not to apply to hospitals with an endowment fund of over $5,000 per annum.[10]

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9 Stats. 1920 (Olson), C. VII, p. 2626, Sec. 6558, 6566 (Oregon), Laws 1917, C. 173, p. 219.

10 Penna. Stats. 1920 (West), Sec. 11909.

§ 81. **Rhode Island.** All corporations formed for . . . charitable, . . . scientific . . . purposes not organized for business purposes, and all corporations of like nature are to be created in the following manner:

Five or more persons of lawful age may associate themselves by written articles which shall set forth: the agreement to form a corporation; the name; purposes; and location. The articles may contain any other provisions not inconsistent with the law for the conduct and the regulation of the affairs of the corporation, or for the limiting, defining, or regulating the powers of the corporation, or of its officers.

Original and duplicate articles of association (in English) are to be acknowledged as real estate deeds, by all persons named therein, each stating his residence opposite his name and these are to be filed in the office of the Secretary of State. The certificate of the General Treasurer that the fee of $5 has been paid is to be filed and duplicate articles are to be certified and delivered by the Secretary of State for a fee of $2.

The first meeting is to be called by a notice signed by one or more of the incorporators stating the time, place, and the purpose of the meeting . . . which is to be mailed at least five days before the meeting. No meeting may be held in pursuance of agreement in writing without such notice. The delivery of the certified duplicate is to make the corporation effective.

The corporate powers are: perpetual succession unless limited; to sue and be sued; have a common seal; elect officers, agents, etc.; make by-laws, contracts; take, hold, transmit, and convey real and personal estate not exceeding $150,000. The General Assembly may authorize holding larger amounts

The articles of association may be amended; method, filing, etc., are set forth. Voting at meetings by proxy is authorized.[11]

§ 82. **South Carolina.** The Secretary of State is authorized to issue certificates of incorporation to any . . . society, company, or other association, having no capital stock divided into shares, but holding or desiring to hold property in common for . . . charitable or eleemosynary purposes

[11] R. I. General Corporation Laws 1920, C. 1925, p. 25, Sec. 72.

other than the insurance of life, health, accident, or property. After three days' public notice, in one or more newspapers published in the county in which the organization is perfected, the incorporators may file in the office of the Secretary of State a written declaration, signed by two or more of the officers or agents elected or appointed to supervise or manage its affairs, setting forth: (1) the names and residences of petitioners, (2) the names of the proposed corporation, (3) the location, (4) purpose, (5) names and residences of all officers, managers, trustees, directors, etc., or such information as the Secretary of State may desire. The fee for registration is to be $3. The corporation is to have power to make contracts, loan money, acquire real and personal property under by-laws, sue and be sued, have a common seal, make by-laws and rules, borrow money, etc. The corporation may be dissolved on a two-thirds vote of the majority of the members. The charter may be amended and filed with the Secretary of State. All papers and charters are to be recorded by the Secretary of State and within thirty days in the county court and the charters are to be published with the Session Laws.[12]

§ 83. **South Dakota.** Associations for benevolent and charitable purposes may be formed to establish and maintain hospitals and infirmaries for the cure of the sick and support of the aged and indigent, asylums. . . .

Articles are to set forth: the name; location; the time; the number of directors and the names and residences of the members who are to serve as directors until the election and qualification of their successors in office; whether it be subject to any superior body or bodies; the amount of property which it may hold; and the disposition to be made in case of its dissolution; whether the private property of its members shall be liable for its corporate debts. Such articles are to be subscribed and acknowledged by the directors with date of meeting to incorporate specified, etc.

The private property of the members is not to be liable for corporate debts unless so provided. The duration of the corporation may be perpetual if it is so stated. The by-laws are to be enacted within three months and are to be filed in the office of the Secretary of State and to be certified by the

[12] Code 1912, Sec. 2862, et seq.

officers. In amending the by-laws, the officers are to be elected, meetings held, etc., as prescribed by the by-laws. In case the superior body revokes the charter, the corporation is to be dissolved upon application of the directors to the circuit court.[13]

§ 84. **Tennessee.** Corporations not for profit, and heretofore or hereafter chartered for the support of any benevolent or charitable undertaking, may increase the number of directors to not more than 100.[14]

Any corporation chartered for religious, charitable, educational, missionary, or other eleemosynary purposes, and not for profit, is to have the power to receive property, real, personal, or mixed by purchase, gift, devise, or bequest, and to sell the same and apply the proceeds toward the promotion of the objects for which it was created. The question is to be submitted to the directors and, if a majority are in favor, the amendment is to be filed in the county recorder's office and then recorded in the office of the Secretary of State, who issues the certificate under seal.

The combination or joining into associations or federations of corporations organized for the general welfare of society and not for profit is authorized.[15]

Corporations may be organized and created for the acquisition, erection, and maintenance of charitable hospitals for the care and treatment of women and women alone. The form of charter is prescribed and the powers are stated: to sue and be sued; to acquire, purchase, and hold real estate and personal property necessary or proper for the transaction of its business. . . . By-laws are to be drawn and officers elected. The general welfare of the society, not for individual profit, is to be the object for which this charter is granted, and hence the members are not stockholders in the legal sense of the term; and no dividends or profits shall be divided among the members.[16] Any corporation chartered for charitable purposes . . . "and not for profit, shall have the power to receive property, real, personal, or mixed, by purchase, gift, devise, or bequest, to sell the same and apply the

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13 South Dakota Rev. Code 1919, Sec. 8854.

14 Tenn. Laws 1915, Ch. 160, p. 445.

15 Tenn. 1917 Laws, Ch. 108, p. 310. Same Ch. 39, p. 86.

16 Tenn. Supp. to Code 1897-1903, p. 391, Laws 1903, C. 45.

proceeds toward the promotion of the objects for which it is created, or to hold any such property and apply the income and profits toward such objects."[17]

§ 85. **Texas.** Any religious society, charitable, or benevolent association may by the consent of a majority of its members become a body corporate, having all powers and privileges thereof and restricted only by charter. They have the power to make by-laws and regulate their affairs as other corporations; may acquire and hold land and personalty necessary for sites, may sell mortgages, etc. Their subordinate bodies are subject to the control of the superior body.

The franchise tax is not required; nor is the corporation required to state the capital stock in its charter.[18]

§ 86. **Utah.** Societies and associations where pecuniary profit is not their object may be incorporated as provided.

They are not required to pay the annual license fee.

Such associations are to meet for the purpose of organization and the chairman or secretary is to make a prescribed affidavit, which constitutes the articles of incorporation. These are to be filed and recorded. The Secretary of State is to issue a certificate that a copy of the articles has been filed in his office, which is sufficient to constitute the association or body corporate. There is the power to sue and be sued; to adopt a seal; contract; hold property necessary to carry on or promote the objects of the corporation, society, or association, etc. The trustees have the control of the property, and are to make an annual report of transactions, etc.

The members are not liable unless such liability is imposed by the articles of incorporation or by-laws, and then only to the extent imposed.

Existing corporations are affirmed.[19]

§ 87. **Vermont.** No charter of incorporation shall be granted, extended, changed, or amended by special law, except for such municipal, charitable, and educational corporations as are to be and remain under the patronage and control of

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17 Tenn. Acts. 1917, C. 178, P. 310.

18 Texas Civil Stats. Anno. 1913, p. 532, C. 11. Religious charitable and other corporations. See also general corporation law under corporations for profit.

19 Utah Comp. Laws 1917, p. 286, Sec. 890.

the State; but the General Assembly shall provide by general laws for the organization of all organizations hereafter to be created. All general laws passed pursuant to this section may be altered from time to time or repealed.[20]

An eleemosynary or charitable corporation may, if it decides so to do, locate, build, and maintain any hospital or other building or structure which it is authorized to establish or construct for carrying out the object and purpose for which it was created, at a site or locality other than that designated in or by its articles or charter, or by the terms of any gift or bequest providing for it; "provided the donors . . . accept the change and provided the municipality from or in which the location is to be changed . . . " consent. The change is not to alter or affect the rights, powers, privileges, or benefits . . . imposed upon such corporation.[1]

§ 88. **Virginia.** By executing, filing, and recording a certificate, any number of persons, not less than three, may associate to form a charitable or benevolent association in which no capital stock is required or to be issued. The certificate is to state: the name; location; purposes; the number of trustees; the name of those who manage the affairs during the first year; the period if limited; the limitation on the real estate holdings; and the regulations for the conduct of affairs.

. . .

This certificate is to be signed by three persons, acknowledged, and presented to the judge of the circuit court of the county, or of the circuit, or to the judge of the corporation or chancery court of the county where the principal office is to be located. The judge is to ascertain and certify whether the persons are of good moral character, and suitable for such purposes. . . . The articles are to be endorsed by the the judge (a fee is to be paid), and presented to the State Corporation Commission which may issue or refuse the charter. When issued, the certificate with the endorsements is to be certified to the Secretary of the Commonwealth and recorded by him, and certified to the clerk of the circuit court

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[20] Gen. Laws 1917, p. 59, Sec. 65, Constitution.

[1] Vermont Gen. Laws 1917, Title 25, C. 210, p. 820, Sec. 4928; 1917 No. 254, Sec. 4815; 1915 No. 244. See also General Corporation Law.

of the county. . . . The corporation has the power to sue and be sued, etc., and to hold real estate not to exceed $50,000. A change of name, location of principal office, amendments, alteration, notice, vote, and dissolution is provided.[2]

§ 89. **Washington.** Any two or more persons desirous of forming a corporation for benevolent, charitable, or scientific purposes, are to make and subscribe written articles of incorporation in triplicate and to acknowledge the same, before any officer authorized to take the acknowledgment of deeds, and to file one in the office of the Secretary of State, one in the office of the county auditor, and retain one.

The articles are to specify: the corporate name and the location of the chief place of business; if a joint stock company, the amount of capital stock, and the amount constituting a share; if not a joint stock company, the terms of admission to membership; the object for which formed; the officers by which the affairs are to be managed, and their election or appointment.

The corporation may sue and be sued; plead and be impleaded in all courts of the State; have a common seal; acquire, mortgage and sell property; and make by-laws; amend articles; etc. The corporation is not subject to license fees.[3]

§ 90. **West Virginia.** A corporation other than a joint stock company may be formed by any number of persons, not fewer than five. The corporation is to have no capital stock; the names and postoffice addresses of incorporators are required. There is to be an agreement to provide for the election or appointment of trustees, their number and term of

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2 Virginia Code 1904, Sec. 1105d.

3 Washington Code (R. & B.) 1910, Sec. 3752. A corporation of this kind may be formed for any lawful purpose except the carrying on of a business, trade, avocation, or profession for profit. It shall have no capital stock. Membership must be equal, with membership certificates assignable and terminable by voluntary withdrawal, expulsion, or death. Not less than five individuals are to prepare, execute, and acknowledge articles of incorporation in triplicate; one filed in the office of the Secretary of State; one in the county recorder's office, and one to be retained. Articles are to state the name, purposes, location, the term of not more than fifty years, the number and names of trustees, etc. The by-laws and their adoption is precedent to the transaction of business. They have the powers to sue and be sued, etc. Their purposes may be changed, the by-laws amended. The corporation is not to engage in business for gain.

office to be specified. The governing power is to be vested in the trustees which have all the powers of stockholders and the directors of joint stock corporations. The original corporators are to be trustees until their successors are elected. The organization of the trustees and their election is to be specified, also the adoption of by-laws.[4]

Corporations (other than joint stock companies) may be formed . . . for benevolent associations, societies, and orders, including . . . lunatic asylums and orders. . . . Five or more persons are to sign agreement stating their purpose which is to be acknowledged and filed with the county clerk and certificate of incorporation is to be issued.[5]

§ 91. **Wisconsin.** The articles of organization of any corporation organized for the establishment and maintenance of any hospital, asylum, or other institution for the care, treatment, or relief of the insane or feeble-minded persons, or both, may contain provisions authorizing it to receive general, special, permanent or temporary endowments and to secure the repayment of the same in accordance with the terms and conditions upon which they may be made by a mortgage upon its real or personal property, or both or otherwise, in the manner in such articles provided.[6]

§ 92. **Wyoming.** Churches, etc., may become incorporated for religious . . . or charitable purposes. The organization meeting, the adoption and filing of articles are specified. If any body of Christians has or shall have, according to its order or mode of government, an organization . . . with ecclesiastical or spiritual jurisdiction over its members throughout the State and such authorities wish to engage in work of . . . benevolence and charity . . . not of limited or local service, they may cause such incorporation to be formed as provided for the incorporation of a church, congregation, or society. Five or more persons organized at a meeting may adopt articles stating: the name and place, the object and purpose, the amount of debts, the manner in which it may contract, the manner of succession, the time and officers, and they may make by-laws.[7]

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4 West Virginia 1919 Acts, Ch. 37, p. 188, amending code.

5 West Virginia Code 1906, C. 55, p. 518, Sec. 2554, et seq.

6 Statutes 1919, Sec. 5805, p. 554.

7 Wyo. Comp. Stats. 1910, Sec. 4225, et seq.

Corporations may be formed for acquiring, holding, or disposing of church or religious society property, for the benefit of religion, for works of charity, etc.

Any person in whom is vested the legal title to the property of the church or religious society, may make and subscribe written articles of incorporation in duplicate, acknowledge the same before some officer authorized to take acknowledgment and file one such in the office of the Secretary of State and retain possession of the other. The articles are to specify: the name, object, estimated value of the property at the time of making the articles, and the title of person making such articles.

Upon the making and filing for record, the group becomes a body politic and corporation sole with continual succession, with the power to acquire, possess and maintain property, and such powers as may be necessary to carry on or promote the objects of the corporation and borrow money, contract, etc.

The articles are to be recorded and filed in the office of the Secretary of State.[8]

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[8] Session Laws 1915, C. 94, p. 105.

CHAPTER III

LIABILITY OF PRIVATE HOSPITALS FOR NEGLIGENCE

§ 100. **Legal Exemptions Favoring Hospitals.** It has been pointed out heretofore that there are various types of hospitals, all of which fall into two broad classifications—the public or governmental institution, and the private institution owned and operated by a limited group of people. Private institutions may be either charitable, that is, not profit making in character, or may be proprietary, or profit making concerns.[1] The legal status of such institutions is determined by the articles of incorporation. To foster and encourage the development of such institutions, certain exemptions have grown up, notably relating to exemption from the liability for negligence and taxation.

§ 101. **Liability on Contract.** A hospital, whether benevolent or not, is liable on contracts legally entered into and whatever it expressly agrees to do must be performed or the hospital is liable for breach of contract. So when such an institution expressly agrees to give certain accommodations and services,[2] it must do so or become liable for damages. This was pointed out in Armstrong vs. Wesley Hospital,[3] where the hospital agreed for a payment in advance to provide certain hospital services. The plaintiff claimed that the services were not provided and sued, claiming damages for breach of contract. The Court after reviewing the decision of the trial court, which was adverse to the plaintiff, said: "Justice would certainly suggest that if these allegations are true, plaintiff is entitled to recover in assumpsit at least the money paid by her to defendant, and possibly whatever dam-

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[1] See page 16.

[2] A hospital which is authorized to receive patients and make contracts for their care, had authority to receive and undertake to care for an infant needing its mother's care, while she was undergoing treatment. 1916, Roche vs. St. Johns' Riverside Hospital. 160 N. Y. S. 401.

[3] 1912, 170 Ill. App. 81.

ages for the breach of the contract may be capable of exact proof, although we express no opinion as to the measure of damages, that question not being before us in this case.''

In general, individuals may demand legal redress or help for two kinds of wrongs: those which can be termed breaches of contract, that is, failures to perform agreements to do or not to do something; and those which are independent of contracts, that is, specific wrongs or torts where the duty is as a rule negative.[4]

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[4] See Cooley on Torts, 2d Ed., p. 791; Kales on Torts, p. 105.

The law undertakes to declare and protect certain general legal (not moral) rights, and establishes a standard of conduct for such purpose. The acts or omissions which disturb or impede the enjoyment of such rights may be treated as legal wrongs or torts, but none others can be. For example, an act may be morally wrong, judged from a strict standard of morality, but redress is not given by the government here. (Cooley, p. 4).

Among others, the rights which the government protects are the primarily personal rights: to life, immunity from attacks and injuries and to control one's own action equally with others similarly circumstanced. Kales enumerates the rights to personal security, property, and reputation, and points out that the rights which are protected by contracts, quasi contracts, and undertakings, are rights only against individuals while the rights protected by the law of torts are enjoyed against the whole world (Kales on Torts, p. 3; American Law and Procedure, Ch. 2).

One may become liable in tort by actually doing to the injury of another something that should not be done; by doing something the individual may rightfully do, but wrongfully or negligently doing it by such means, at such time, or in such manner that another is injured; or by neglecting to do something which ought to be done, whereby another suffers an injury. The first of these is an active wrong which may be done by the party in person or by some other person for whose conduct generally or under the particular circumstances he is responsible. One is always responsible for the conduct which he counsels, advises, or directs and for whatever naturally results from his counsels. This is his wrong which is accomplished through another. The other wrongs above enumerated are the wrongs of negligence.

Negligence is negative rather than positive and implies the absence of the care, prudence, or forethought required. Exceptional obligations of care and caution may be required of certain callings and in establishing negligence, it must be shown that an existing duty has not been performed. That is, the complaining party must point out how the duty arose which is supposed to have been neglected. After the duty has been pointed out, the failure to observe it must be shown, that is, the existence of the negligence must be shown. The presumption is that the individual will perform his duty, until the contrary is shown.

The standard of care is that of ordinary prudence depending upon the circumstances. Consequently, there are no legal degrees of negligence. (Kales, p. 107.) Questions of law are usually passed upon conclusively by the judge and questions of fact by the jury. Generally, the ultimate question of whether, on admitted facts, the individual has exercised due care, goes to the jury with instructions

Whether a contract has been made or fulfilled is generally a question for the jury as in the following case.[5] A hospital association had contracted to furnish medical, surgical, and hospital service to a plaintiff in case of illness.[6] In replying to her request for care and service the hospital virtually refused to treat the patient on the ground that her disease was chronic, and not subject to treatment under the contract. By this refusal the patient was relieved from making further requests for treatment. This was held to be a question of fact for the jury.

§ 102. **Liability of the Charitable Hospital For Injuries to Patients.** There is wide divergence of judicial opinion on the liability of the charitable hospital for injuries to patients. In one state, at least, such hospitals are exempt from liability under present rulings of the highest court. In two jurisdictions at least the charitable hospital has been held liable for injuries to patients. In the majority of states, however, the rule is that such hospitals are exempt from liability if their employees are selected with due care.

The Supreme Court of Ohio in Taylor vs. Flower City Hospital[7] stated the divergence of opinion and summed up as follows: "The liability of public charitable hospitals for the negligence and wrongful acts of employees has been considered in many of the courts in this country and in England, and this has resulted in the expression of widely different views. In some instances different conclusions have been arrived at in the same jurisdiction under various circumstances. Courts have differed in the method of reasoning, as well as upon the grounds upon which they have arrived at their conclusions. Some courts have held that as funds

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from the Court. In the law of torts also, there are the rights protected by trespass, those of personal security and property, affording protection against direct violations accomplished by physical means, force. (See also Nuisances.)

Where a breach of contract has resulted in damages it is treated as sounding in tort and it has been stated that there can be no liability in contract if none exists in tort. 1918, Cook vs. John C. Norton Memorial Infirmary, 180 Ky. 331, 202 S. W. 874; and 1918, Davin vs. Kansas Medical Missionary Assn., 103 Kan. 48, 172 Pac. 1002. See also 1924, Zollman: The American Law of Charities, Sec. 801.

5 1919, Coffey vs. Northwestern Hospital Association, 183 Pac. 762.

6 Contracts for medical service, p. 143.

7 1922, 135 N. E. 287. See also 1924, St. Vincent's Hospital vs. Stine, 144 N. E. 537. Ind.

are donated for the specific object of the beneficence, they constitute a trust and cannot be diverted to the payment of judgments for torts. Others have regarded the acceptance by the patient of the benefit of the charity as a waiver of claim for neglect. But the most generally accepted theory is that it is against public policy to hold the charity liable for negligence of servants when they have been selected with due care."

§ 103. **Complete Non-Liability.** A recent case in Massachusetts, Roosen vs. Peter Bent Brigham Hospital, relieves the hospital from liability for the negligence of the managers in selecting incompetent subordinate agents which have been selected without care.[8]

"A public charitable hospital," said the Court, "is not liable for negligence of its managers in selecting incompetent subordinate agents any more than it is for the negligence of subordinate agents selected with care," even though the hospital orally contracted with the pay patient injured to furnish careful treatment.

§ 104. **Full Liability.** Not many cases have been decided holding hospitals liable for injuries to patients, the principal one being Glavin vs. State Hospital.[9] In this case the Court placed full liability on the hospital for an injury to a patient, but the Legislature later overruled the Court by passing a law exempting such institutions from liability.[10] The opinion has been widely quoted and the fact that it was overruled by the Legislature does not change its value in the absence of such overruling legislation.

In this case the Court said: "One who sustains injury at a public hospital from unskilful surgical treatment by an unpaid attending surgeon may maintain an action against the hospital therefor, although the hospital is a public charity, supported by trust funds, and the plaintiff paid nothing but a small amount for board and attendance.

"Though the relation of master and servant cannot be said to exist between the hospital and the physicians and surgeons attendant on it, the hospital does, nevertheless, assume

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[8] 1920, 235 Mass. 66, 126 N. E. 392. See also 1923, Foley vs. Wesson Memorial Hospital, 141 N. E. 113, 240 Mass. See also, 1925, D'Amato vs. Orange Memorial Hospital (N. J.), 127 Atl. 340.

[9] 1879, 12 R. I. 411.

[10] 1909, Rhode Island General Laws, C. 21, Sec. 38.

a responsibility in that it uses its own judgment or that of its trustees in selecting them, and impliedly, therefore, undertakes to exercise reasonable care to get such as are skilful and trustworthy in their profession. A patient has a right to rely on the exercise of such care, and consequently if, through the neglect of the hospital to exercise it, he receives an injury, he is entitled to look to the hospital for indemnity, unless the hospital enjoys some extraordinary exemption from liability.

"If a person undertakes to do an act or discharge a duty by which the conduct of others may properly be governed, he is bound to do it in such a manner that those who act upon the faith of it shall not suffer from his negligence; and this even if there was in the beginning no consideration for the promise.

"The only safe ground, therefore, is to hold that the corporation is itself present, acting in and through its officer selected for the particular purpose, and is, therefore, liable to the same extent he would be himself."[11]

A pneumonia patient in defendant's hospital, suffering from delirium, was left alone in a second story room. A few minutes later the window was found open and the patient was lying on the ground below. This was sufficient evidence to sustain a finding that he was killed by the fall. The Minnesota Court said: "There is sufficient evidence of negligence on the part of defendant and its employees. The nurse testified that she felt deceased needed watching, that he was in a dangerous condition and might commit injury to himself, that if she had had more help she would have thought it proper to watch him closely, and that the only reason that she did not watch him closer was that she had so much work she could not do so. This evidence is sufficient to sustain a finding that defendant was negligent in failing to provide a sufficient number of attendants and that the attendants were negligent in failing to exercise proper care for the patient's safety."[12]

§ 105. **Theories Involved in Decisions.** Most of the cases involving the negligence of the institution or its

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[11] 1879, Glavin vs. Rhode Island Hospital, 12 R. I. 411.

[12] 1920, Mulliner vs. German Evangelical Synod of North America, 144 Minn. 392, 175 N. W. 699.

servants, fall between the decisions requiring full liability for charitable institutions and those giving complete exemption. In general three theories have been advanced to support the logic involved—the doctrine of implied waiver, the trust fund theory, and that of public policy. The theory which seems most generally accepted is that the hospital will not be held liable for the negligence of servants which have been selected with due care.

§ 106. **Theory of Implied Waiver.** The doctrine of an implied waiver by the acceptance of benefits is, that one who accepts the benefit either of a public or a private charity enters into a relation which exempts the benefactor from liability for the negligence of his servants in administering the charity,[13] provided usually that there has been due care used in the selection of servants. If such care has been used, then there is an assumption of risk by the patient who seeks and receives the services of a public charity.[14] A beneficiary of a charity cannot hold the association liable for negligent injuries on the ground of public policy or diversion of trust funds, because one accepting the benefit of a charity enters into a relationship which exempts his benefactor from such liability.

A patient in a public hospital, chartered as a charitable corporation, although under private management, cannot recover from such corporation for injuries resulting from the negligence of a nurse employed in its hospital, and in whose selection due care was used; there being an implied agreement arising from the acceptance by the patient of the corporation's bounty that it shall not be liable for the acts of such servants in administering the charity.[15]

In the opinion of the Court "one who accepts the benefit either of a public or a private charity enters into a relation which exempts his benefactor from liability for the negligence of his servants in administering the charity; at any rate, if the benefactor has used due care in selecting these servants. . . . The purity of their aims may not justify their torts; but, if a suffering man avails himself of their charity, he

13 1910, Hordern vs. Salvation Army, 199 N. Y. 233, 92 N. E. 626.

14 1914, Hospital of St. Vincent vs. Thompson, 116 Va. 101; 81 S. E. 13.

15 1901, Powers vs. Massachusetts Homeopathic Hospital, 109 Fed, 294.

takes the risks of malpractice, if their charitable agents have been carefully selected."[16]

"Every member of the public is interested in the building up and maintenance of a charitable institution designed for the alleviation of human suffering, and every one may be supposed to be concerned in such institution, and to be a party to a line of conduct which would disable every other from doing anything which has a tendency to prevent the institution from the functions intended by its founder. . . . So it may be said that any citizen who accepts the service of such institution (it making no difference whether in any special instance, he pays his way) does so upon the ground, or the implied assurance, that he will assert no complaint which has for its object, or perhaps we should say, for its result, a total or partial destruction of the institution itself." On these grounds a charitable institution was relieved from liability for an injury to a patient who was injured or burned by a hot water bottle put on his leg by a nurse, following his return from an operation.[17]

§ 107. **Trust Fund Theory.** The trust fund doctrine of exemption from liability holds that a trust fund cannot be made liable for breaches of trust by the trustees, that is, if the charity or trust fund could be used to compensate the injured parties for the negligence of the agents or servants of the hospital, the fund would be diverted to purposes never intended by the donor, and hence the charitable purposes of the founders or creators would be frustrated.

"Damages cannot be recovered from a fund held in trust for charitable purposes," said the Court in Perry vs. House of Refuge.[18] "No principle of law seems to be better established, both upon reason and authority, than that which declares a purely charitable institution, supported by funds furnished by private and public charity, cannot be made liable in damages for the negligent acts of its servants. Were it not so, it is not difficult to discern that private gift and public aid would not long be contributed to feed the hungry maw of litigation, and charitable institutions of all kinds

16 1901, Same, Powers vs. Massachusetts Homeopathic Hospital, 109 Fed. 294.

17 1907, Adams vs. University Hospital, 122 Mo. App. 675, 99 S. W. 453.

18 1885, 63 Md. 21, 52 Am. Rep. 495, 501.

would ultimately cease or become greatly impaired in their usefulness.[19]

"If, in the proper execution of the trust, a trustee or an employee commits an act of negligence, he may be held responsible for his negligent act; but the law jealously guards the charitable trust fund, and does not permit it to be frittered away by the negligent acts of those employed in its execution."[20]

In this case involving an educational institution the Court declared: "The appellee University is a private corporation, but is organized for purely charitable purposes. It declares no dividends and has no power to do so. It depends upon the income from its property and the endowments and gifts of benevolent persons for funds to carry out the sole object for which it was created—the dissemination of learning. . . . all of its funds and property, from whatever source derived, are held in trust by it, to be applied in furtherance of the purpose of its organization and increasing its benefits to the public. The funds and property thus acquired are held in trust, and cannot be diverted to the purpose of paying damages for injuries caused by the negligent or wrongful acts of its servants and employees to persons who are enjoying the benefit of the charity. An institution of this character, doing charitable work of great benefit to the public without profit, and depending upon gifts, donations, legacies, and bequests made by charitable persons for the successful accomplishment of its beneficial purposes, is not to be hampered in the acquisition of property and funds . . . by any doubt that might arise in the minds of such intending donors as to whether the funds supplied by them will be applied to the purposes for which they intended to devote them, or devoted to the entirely different purpose of satisfying judgments recovered against the donee because of the negligent acts of those employed to carry the beneficent purpose into execution."

The trust fund theory is made to apply even in cases of employees of hospitals: "A fireman injured through the

19 See also, 1910, Jensen vs. Maine Eye & Ear Infirmary, 107 Me. 408, 78 Atl. 898; and 1924, St. Vincent's Hospital vs. Stine, 144 N. E. 537. Ind.

20 1905, Parks vs. Northwestern University, 218 Ill. 381, 75 N. E. 991.

defective condition of a fire escape attached to realty of a charitable corporation administering a trust fund for the care and cure of indigent insane, could not recover damages against the corporation for his injuries, since damages for tort cannot be recovered from a fund held in trust for charitable purposes."[21]

The income from other sources is generally considered an increment of the trust fund and equally protected. "It follows that the money that the hospital receives from its pay patients is as strictly the increment of the charitable donations it has received as would be the interest on the money given it if invested on loan. If any profit results from this source, it can only be regarded as incidental additions to this trust fund or income."[1]

In the same case the Supreme Court of Pennsylvania held that a corporation which erected and maintained a hospital from charitable donations, admitting every one, irrespective of ability to pay, was a public charity, and not liable for personal injuries caused by the negligence of a nurse, though the person injured was a pay patient and one-third of the hospital space was devoted to pay patients, and though the plaintiff had disclaimed any right of execution against any funds other than that received from pay patients.

The Court said: "Two-thirds of the hospital space is used for the care of charity patients, and a dispensary is maintained, which is administered without charge and serves annually thousands of patients. Admission to the hospital is denied no one on grounds of religious faith, or because of inability to pay. The corporation is under the management or control of a board of managers. It has no corporate stock; it can declare no dividends, and its entire income is employed to maintain and enlarge, as it is able, its capacity for gratuitous, beneficent service to the public. The fact that it receives pay for a certain class of patients detracts nothing from its character as a purely charitable institution. The argument overlooks the fact that every dollar received by the defendant corporation, from whatever source, is

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[21] 1917, Loeffler vs. Trustees of Sheppard and Enoch Pratt Hospital, 130 Md. 265, 100 Atl. 301.

[1] 1910, Gable vs. Sisters of St. Francis, 227 Pa. 254, 75 Atl. 1087.

stamped with the impress of charity. For what did these plaintiffs pay? For accommodations which the hospital was enabled to provide through the use of money charitably donated to it. The room, the bed, the furnishings, and conveniences for which the plaintiff paid are all of them, the direct and immediate product of the voluntary donations it received."

A corporation for the care of the insane which is organized to carry out the purposes of a charitable trust, is not liable for injuries to persons committed to its charge and which are caused by the negligence of its trustees in the construction of its buildings.[2]

"The corporators receive no compensation or dividends. It is purely an eleemosynary institution, organized and maintained for no private gain, but for the proper care and medical treatment of the sick. Hospital physicians and attendants are, and of course, must be paid. . . . The law under which the defendant is organized recognizes it as a charity; exempts its property from taxation; provides that its funds shall be faithfully and exclusively used for the purposes of its organization, and that it may receive by gift, grant, or devise, any property, but only for the purpose for which it is incorporated. It has no shares, and is not a stock corporation. . . . If, in the proper execution of the trust, a trustee or an employee commits an act of negligence, he may be held responsible for his negligent act; but the law jealously guards the charitable trust fund, and does not permit it to be frittered away by the negligent acts of those employed in its execution.

"The fact that patients who are able to pay are required to do so does not deprive the defendant of its eleemosynary character, nor permit a recovery for damages on account of the existence of contract relations. The amounts thus received are not for private gain, but contribute to the more effectual accomplishment of the purpose for which the charity was founded."[3]

This theory has been discounted by some courts: "A charitable hospital's exemption, if any, from liability for

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[2] 1894, Downes vs. Harper Hospital, 101 Mich. 555, 60 N. W. 42.

[3] 1894, Downes vs. Harper Hospital, 101 Mich. 555; 60 N. W. 42.

negligent injury to a patient, cannot rest on the theory that its funds are held in trust for its particular charitable purpose, and that it would be a breach of trust to apply them to any other purpose, and that the payment of damages resulting from the negligence of its servants is not a purpose contemplated by the trust."[4] The patient is entitled to expect that reasonable care will be taken. The New York Court states such a theory would exempt from liability generally and that there is no reasonable distinction between negligence in selecting employees, the negligence of employees, and the liability for breach of contract or tort; and yet, this distinction is recognized.[5]

An exception to the weight of opinion holding pay patients in the same relationship to a charitable hospital as charity patients is the case of Morton vs. Savannah Hospital,[6] where it was held: "Under the circumstances . . . (although the hospital is a charitable institution, and the general rule is that charitable trust funds are not to be depleted by subjection to liability for negligence), the corporation would be liable, but a recovery would be restricted to income derived from non-charitable sources.

"With the exception just stated, an incorporated hospital, primarily maintained as a charitable institution, is not liable for the negligence of its officers and employees, unless it fails to exercise ordinary care in the selection of competent officers and servants, or fails to exercise ordinary care in retaining such officers and employees.

"Where a patient in such institution is not the recipient of its charity, but is able to pay and does pay for the services, and is injured on account of carelessness, negligence, or incompetence of an officer and employee of an institution, the corporation is liable therefor; but the judgment can only subject funds derived strictly from non-charitable pay patients, and for this purpose the petition need not allege that the corporation failed to exercise ordinary care in the selection of its officers and employees or in retaining the same. A judgment so recovered will not subject funds in trust for

4 1915, Tucker vs. Mobile Infirmary Association, 191 Ala. 572, 68 So. 4.

5 1916, Roche vs. St. John's Riverside Hospital, 96 Misc. Rep. 289, 160 N. Y. S. 401.

6 1918, 148 Ga. 438, 96 S. E. 887.

charitable purposes, unless the petition alleges that the corporation failed to exercise ordinary care in the selection of its officers and employees, or in retaining the same."[7]

On the ground that it is the giving and receiving of charity that creates the exemption from liability, and not the institution administering it, it has been held that a paying patient in the hospital may recover damages for injury done.[8]

§ 108. **Public Policy Theory.** In going over the theory of exemption from liability of charitable hospitals the Supreme Court of Wisconsin said in Morrison vs. Henke:[9] "While our courts disclose great unanimity in declaring charitable hospitals immune against claim of their patients based upon the negligence of their servants, they are by no means agreed as to the grounds of immunity. Some place it upon the ground of public policy; others upon the ground that since the funds of the institution are impressed with a trust for charitable purposes, they cannot be diverted to other uses, and still others upon the ground of an implied waiver on the part of voluntary recipients of the charity of any claim for damages.

"Without discussing the relative merits of these different grounds, we prefer to rest our decision upon the principle that, since these charitable hospitals perform a quasi public function in ministering to the poor and sick, without any pecuniary profit to themselves, the doctrine of respondeat superior should not be applied to them in favor of those receiving their charitable services. . . . Since the hospital derives no profit from its work, and since it is founded for the sole purpose of conserving the health and life of all who

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7 1918, Morton vs. Savannah Hospital, 148 Ga. 438, 96 S. E. 887.

A corporate hospital organized to nurse the sick and to exercise care for poor and aged by deaconesses, and to found and support a deaconess home, where nurses should be trained, etc., which issued no shares of stock and paid no profits to its members has been held to be a charitable organization. 1920, Nicholas vs. Evangelical Deaconess Home and Hospital, 281 Mo. 182, 219 S. W. 643.

A hospital organized and maintained with funds donated, caring for all sick and injured persons brought to it, charging those who are able to pay and treating free of charge those who are not, operated under a board of trustees consisting of the Protestant Episcopal Bishop and the Rector and church wardens, is a charitable institution. 1916, Bishop, Randall Hospital vs. Hartley, 24 Wyo. 408, 160 Pac. 385.

8 1915, Tucker vs. Mobile Infirmary Association, 191 Ala. 572, 68 So. 4.

9 1916, 165 Wis. 166, 160 N. W. 173.

may need its aid, and since it ministers to those who cannot pay, as well as those who can, thus acting as a good Samaritan, justice and sound public policy alike dictate that it should be exempt from the liability attaching to masters whose only aim is to engage in enterprises of profit or of self-interest. The patient who accepts the services of such an institution, if injured therein by the negligence of an employee, must be content to look for redress to such employee alone. The principle invoked is analogous to that which exempts municipalities from the rule of respondeat superior in the discharge of their governmental functions."

A broad ground of exemption is stated in another case: "A hospital opens its doors without discrimination to all who seek its aid. It gathers in its ward a company of skilled physicians and trained nurses, and places their services at the call of the afflicted, without scrutiny of the character or the worth of those who appeal to it, looking at nothing and caring for nothing beyond the fact of their affliction. In this beneficent work it does not subject itself to liability for damages, though the ministers of healing whom it has selected have proved unfaithful in their trust."[10]

One of the leading cases based on this theory is that of an insurance patrol company whose object, as described by its charter, was "to protect and save life and property in or contiguous to burning buildings, and to remove and take charge of such property or any part thereof, when necessary." It was declared to be a public charity, though the evidence shows that it is a corporation without capital stock or moneyed capital, and it is supported by voluntary contributions derived from different insurance companies, "it appearing that in protecting property no distinction is made between property insured and property not insured, and that no profits or dividends are made and divided among the corporators."[11]

"Passing by for the present the question of a public charity, it seems plain that this corporation might well have been created by the State in aid of the municipal government of the City of Philadelphia. It is one of the recognized functions of municipal government to suppress and extinguish

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[10] 1915, Schloendorff vs. Hospital, 211 N. Y. 125, 105 N. E. 92.

[11] 1888, Fire Insurance Patrol vs. Boyd, 120 Penn. 624, 15 Atl. 553.

fires. For this purpose the city has a paid fire department, which has taken the place of the volunteer fire department formerly in existence. It is as much the province or duty of the city to save life and property at fires as to extinguish such fires, and the Fire Insurance Patrol might well have been organized as an auxiliary to the city government, and placed under its direct control. That it aids the city as a volunteer does not alter the fact that it is still an auxiliary of the municipal government, performing functions which that government might properly perform, just as did the old volunteer fire department.

"Our conclusion is that the Fire Insurance Patrol of Philadelphia is a public charitable institution; that in the performance of its duties it is acting in aid and in cause of the municipal government in the preservation of life and property at fires."[12]

§ 109. **Non-Liability for Negligence of Servants Selected With Due Care.** The Supreme Court of Ohio in a late case has said with respect to the liability of charitable hospitals: "The decisions of courts are irreconcilable, either in the conclusions arrived at or as to the reasons given by different courts for the same conclusion. However, we are convinced that sound reasons sustain the great weight of authority to the effect that a public charity should not be held liable for the negligence of the servant in whose selection the hospital and its managers have exercised due care. On the other hand, such an institution is liable when it fails to exercise such care."[13]

The Court set forth that "the exemption from the rule

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[12] 1888, Same, 120 Penn. 624, 15 Atl. 553.

[13] 1922, Taylor vs. Flower Hospital, 104 Ohio St. 61, 135 N. E. 287.

1913, McInerny vs. St. Luke's Hospital Association, 122 Minn. 10, 141 N. W. 837.

1906, Hewett vs. Woman's Hospital Aid Association, 73 N. H. 556, 64 Atl. 190.

1910, Hordern vs. Salvation Army, 199 N. Y. 233, 92 N. E. 626.

1914, Schloendorff vs. Hospital, 211 N. Y. 125, 105 N. E. 92.

1879, Glavin vs. State Hospital, 12 R. I. 411, 34 Am. Rep. 675.

1912, Basabo vs. Salvation Army, 35 R. I. 22, 85 Atl. 120.

1914, Hospital of St. Vincent, etc. vs. Thompson, 116 Va. 101, 81 S. E. 13.

A charitable hospital is not liable in damages to a pay patient for injuries suffered when a nurse, a servant of the hospital, gave carbolic acid, instead of alcohol, for a rub; the doctrine of respondeat superior not applying in such cases. 1920, Nicholas vs. Evangelical Dea-

respondeat superior, which experience has shown to be a valuable aid in securing the ends of justice, should not be sweeping and complete, but should be surrounded by such safeguards as will prevent the neglect of duty which the hospital can and should perform. It cannot watch or control the countless acts and movements of its servants, but it can and should see that only careful and competent servants minister to stricken patients who are within its walls. Moreover, while it may well be said that donors of funds for the praiseworthy objects of charitable hospitals do not contemplate the diversion of the fund for the payment of damages for the numerous acts of servants referred to, yet they necessarily realize and appreciate that they give their donations to those who have the management and control of the institution, and that every principle of justice requires that they use care in the development and maintenance of the property, and in the selection of servants who have the oversight of patients. . . . We are convinced that sound reasons sustain the great weight of authority to the effect that a public charity should not be held liable for the negligence of a servant in whose selection the hospital and its managers have exercised due care. On the other hand, such an institution is liable when it fails to exercise such care."[14]

In the opinion of the Supreme Court of Massachusetts, ". . . if there has been no neglect on the part of those who administer the trust and control its management, and if due care has been used by them in the selection of their inferior agents, even if injury has occurred by the negligence of such agents, it cannot be made responsible. The funds intrusted to it are not to be diminished by such casualties, if those immediately controlling them have done their whole

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coness Home, 281 Mo. 182, 219 S. W. 643.

In a number of cases, however, this basis of public policy as a ground of immunity has been definitely disproved.

1907, University of Louisville vs. Hammock, 127 Ky. 564, 106 S. W. 219.

1907, Bruce vs. Central M. E. Church, 11 Ann. Cas. 150, 147 Mich, 230.

[14] The hospital was held liable in this case for injury caused by it in negligently and carelessly authorizing a servant who was not skilled to administer what is termed a clysis, or injection of hot water into the intestines following an operation. As a result, the patient was scalded internally and externally.

The Ruling Case Law has designated this theory of implied waiver after care in the selection of servants as the prevailing rule with regard to a hospital liability. 13 R. C. L. 947, Sec. 11.

duty in reference to those who have sought to obtain the benefit of them. There was no attempt to show that the trustees had in any respect failed in the performance of their duty. If they made suitable regulations, had selected proper persons to fill the position of surgeons, then, whether those persons neglected to perform their duty, or whether another person, as the house pupil, not selected for the office of surgeon, assumed, without authority, to act as such, and the injury has thus resulted, the plaintiff has no remedy against the corporation.''[15]

§ 110. **What Constitutes Due Care in Selecting Servants?** What constitutes due care in selection of physicians, nurses, and other employees? More cases are decided affirmatively than negatively on this point. The cases where due care was not shown in selection of employees do not clarify the issues adequately. The question must become more and more insistent with the growth of specialization in all branches of medicine. Because a physician is licensed to practice and is on the staff, does not necessarily justify his selection for surgical work, not to mention the more special branches of surgery. A nurse trained in a special hospital is not necessarily a proper attendant for cases involving particular skill in a different line. Consideration should also be given to the severity of the illness, a point scarcely touched upon by the courts as yet, that is, the care required should be governed by the condition of the patient and proportionate to the severity of the illness.[16]

Affirmatively, due care has been held to mean that where the trustees of a charitable hospital, who are laymen, appointed the medical staff on the recommendation of a board of twenty-five physicians and surgeons, pursuant to the rules of the hospital, and no charge of incompetency is made against

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[15] 1876, McDonald vs. Mass. Gen. Hospital, 120 Mass. 432, 21 Am. Rep. 529.

The fact that a nurse applied the wrong drug to a patient's eye is insufficient proof on which to base a recovery for the loss of sight of one eye; there must be affirmative evidence that the drug negligently administered produced the injury complained of. 1922, Derrick vs. Portland Eye, Ear, Nose, and Throat Hospital (Ore.), 209 Pac. 344.

A charitable hospital conducted solely for philanthropic and benevolent purposes is not liable to inmates or pay patients for the negligence of nurses. 1912, Duncan vs. Sanitarium Association, 92 Neb. 162, 137 N. W. 1120.

[16] The evidence may be insufficient to sustain the allegations of incompetency as in the case of

those so appointed, such trustees are not responsible to patients for the competency of such appointees.[17]

The Court said: "The trustees, who are laymen, must naturally leave the competency of their physicians and surgeons to the judgment of those competent to determine such matters, since they are not qualified to make the determination themselves. They performed their duty towards the patrons of the hospital in appointing a competent board to examine applicants, and in acting upon its report by the appointment of Dr. ————. . . . No charge of incompetency has ever been made against him. The trustees were, therefore, not negligent in retaining him. Even if this were not a charitable institution, the full duty of the trustees in employing and retaining Dr. ———— was performed."[18]

In another case it was declared by the Supreme Court of Washington that where a master withholds $1.00 per month from an employee's wage, pays such money to a physician selected by the company to attend injured employees, and derives no profit from the employment, he is under the implied duty of selecting a competent physician, and when he does this, his duty is discharged.[19]

Where a hospital incorporated for charitable purposes has exercised reasonable care in selecting a surgeon, it is not liable for his negligence or malpractice, although the plaintiff paid for the services rendered.[20]

1915, Moses vs. St. Barnabas Hospital, 130 Minn. 1, 153 N. W. 128. There the action was brought to recover from injuries which were sustained by a patient at the defendant's hospital. These injuries were caused by the alleged incompetence and negligence of the hospital attendants, but the action was dismissed because the evidence failed to sustain the allegations of incompetence or negligence.

[17] 1915, Moses vs. St. Barnabas Hospital, 130 Minn. 1, 153 N. W. 128.

[18] 1902, Pepke vs. Grace Hospital, 130 Mich. 493, 90 N. W. 278.

[19] 1910, Wells vs. Ferry, 57 Wash. 658, 107 Pac. 869.

"A surgeon who examined an injured arm by looking into the arm through an x-ray machine, and by mistake treated the arm for a sprain, rather than a fracture, uses reasonable care and is not liable for the mistake, where though if he had taken an x-ray photograph he would have discovered the fracture; such a photograph being taken only as a measure of extreme caution." This statement undoubtedly has been rendered obsolete by the passage of time and the development of science and invention.

[20] 1891, Van Tassel vs. Manhattan Eye, etc., Hospital, 15 N. Y. 620; 1917, Norton vs. Hefner, 132 Ark. 18, 198 S. W. 97.

A hospital which is a public charitable corporation is not liable for the negligence of a nurse in leaving a hot-water bottle in a bed, whereby a patient was burned, there having been no

When a physician and surgeon takes charge of a case he impliedly represents that he possesses, and the law imposes on him the duty of possessing and exercising, such skill and learning as is possessed by the ordinary practitioner in that general locality, measured by the state of medical and surgical science at the time the service is rendered.[21]

In cases involving due care in selection, it must affirmatively appear that an injury complained of was caused by the lack of reasonable care in selection, and not by independent negligence of the individual.[1]

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omission to exercise due care in the selection of the nurse. 1895, Joel vs. Woman's Hospital, 89 Hun. (N. Y.) 73, 35 N. Y. S. 37.

"The fact that the injured person was a pay patient is universally held not to render the institution liable." 1924, St. Vincent's Hospital vs. Stine, 144 N. E. 537. Ind.

A charitable medical institution is not liable for the negligence of its surgeon in operating on a patient gratuitously, where such institution exercises due care in employing a surgeon deemed competent. 1901, Collins vs. New York Post-Graduate Medical School, 69 N. Y. S. 106.

Hospitals organized to minister to all persons of all creeds, are liable for the negligence of their physicians and servants only when ordinary care has not been exercised in their selection and retention; and it is immaterial whether the patients injured were charity patients or paid the usual compensation for such service. 1914, St. Paul's Sanitarium vs. Williamson, 164 S. W. 36.

This rule is applicable to paying as well as to free or nonpaying patients when the hospital is operating as a charitable institution. 1901, Powers vs. Mass. Homeopathic Hospital, 109 Fed. 294. 1916, Morrison vs. Henke, 165 Wis. 166, 160 N. W. 173.

[21] In a case involving the unincorporated Walla Walla Sanitarium, it was stated that "a physician having been employed to perform an operation, while using a uterine packer, lost the spring out of the machine which became imbedded in the uterus. The spring was about twelve inches long, and remained some fifteen days after the operation, when it was discovered by another physician, who removed it . . . It appeared that the packer used by the surgeon was not then used by those possessing average learning and skill in the locality. The Court held, that the surgeon was negligent in leaving the spring in the cavity, in failing to discover and remove it, and in using a packer that was unsafe."

"Where a surgeon in operation loses a metallic spring twelve inches in length, in the wound, and fails to remove it, it authorizes the jury to infer negligence without the aid of expert evidence . . . 'Whether a surgical operation was unskillfully or skillfully performed, is a scientific question. If, however, a surgeon should lose the instrument with which he operates in the incision which he makes in his patient, it would seem as a matter of common sense that scientific opinion could throw little light on the subject.'" 1913, Wharton vs. Warner, 75 Wash. 470, 135 Pac. 235.

[1] "In no place does it affirmatively appear that the injury complained of was caused or contributed to by any negligent act of the defendant (the hospital) by not using reasonable care in the selection of its servants, or that the injury was due to negligence in the selection of servants, as differentiated from the negligence of the servant, hence

In a suit against a hospital, not operated for profit, damages were asked for injuries sustained by the plaintiff's wife, who, after an operation, was placed in a bed in which there was a hot-water bottle so hot that it severely burned her. The evidence was held sufficient to support a finding that the hospital did not exercise ordinary care in the selection of its servants.[2]

Similarly in Williams vs. Pomona Valley Hospital Association[3] (a private hospital), action was brought against the proprietor of a hospital for injuries alleged to have been caused by the act of a nurse in placing hot-water bags on or about the plaintiff's feet in such a careless or negligent manner that his feet were burned and scalded.[4]

In Hoke vs. Glenn,[5] it was held that though a hospital is a "charitable institution" and not within the rule respondeat superior, it nevertheless is liable for injuries to patients resulting from its negligence in the selection of its agents and servants.

"The beneficiaries of charitable institutions," said the Court, "are the poor, who have very little opportunity for

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there is no liability. If the case rested on the negligence of the defendant in the selection of incompetent servants, then it should appear affirmatively that the injury is traceable to such negligence. 1918, Mikota vs. Sisters of Mercy, 183 Iowa 1378, 168 N. W. 219.

Where a surgeon has carefully selected an interne to watch his case, and where there is no negligence in performing the operation, the surgeon is not liable for the interne's negligence in caring for the patient unless he expressly contracted to look after the treatment in connection with the interne. 1917, Norton vs. Hefner, 132 Ark. 18, 198 S. W. 97.

2 "While it was necessary and usual to place the bottle of hot water in the bed, it was attended with more or less possible injury to the patient if managed improperly. From which it follows that it was the duty of those dipellant's servants." 1914, St. Paul Sanitarium vs. Williamson, 164 S. W. 36.
recting the placing of the bottle to have selected no person for the task not competent to anticipate injury to the patient by reason of the water's being too hot . . . The facts recited . . . sustain the finding of the jury that ordinary care was not exercised in the selection and retention of ap-

3 1913, 21 Cal. A. 359, 131 Pac. 888.

4 "It was as much the duty of a nurse in a hospital dealing with an unconscious patient unable to care for himself in applying hot-water bags to observe the effect of such application as to test the temperature of the water before applying . . . The powers of resistance, the condition of the patient, must of necessity have much to do with the application of remedies, either by a physician or a nurse, and this duty could only be observed by constant and unremitting care and attention, which is just as obligatory upon the nurse as is the duty of applying the remedy directed by the physician in charge." 1913, Same, 131 Pac. 888.

5 1914, 167 N. C. 594, 83 S. E. 807.

selection, and it is the purpose of the founders to give to them skilful and humane treatment. If they are permitted to employ those who are incompetent and unskilled, funds bestowed for beneficence are diverted from their true purpose, and under the form of a charity, they become a menace to those for whose benefit they are established. . . . It is, therefore, better for those committed to their care and for the institutions, and necessary to effectuate the purpose of their creation, to require the exercise of ordinary care in selecting employees, and in supervising them."

Where there was no evidence that surgeons visiting a charitable hospital to treat a patient requesting it, knew or were chargeable with the knowledge of any incompetence of the nurses, who were not hired by them, but by the hospital, the surgeons had a right to assume that the nurses were competent.[6]

When the corporation has exercised due care in the original selection of the officer, then it is not liable for his subsequent act unless the knowledge of his unfitness and incapacity was brought home to the corporation.[7]

In a Pennsylvania case which went through the state courts and up to the Supreme Court of the United States, it was held that evidence was insufficient, as a matter of law to sustain allegations of negligence against a hospital association in an action to recover for the death of a patient which resulted from poison given to him by a nurse through mistake, under the rule that in case of the negligence of a servant while engaged in administering a charity the doctrine of respondeat superior does not apply.[8]

"Here it is conceded that the negligence of the nurse was the direct cause of the death. There is neither allegation nor proof of any negligence in the selection of the nurse. It is conceded that the superintendent was competent, and shown that she was a person of wide experience. In her care were placed the internal operations of the hospital, including the selection and charge over the nurses. All the medicines intended for internal use, both poisonous and non-poisonous, were kept in closets under lock and key; those intended for external application, to be used under the direc-

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6 1916, Morrison vs. Henke, 165 Wis. 166, 160 N. W. 173.

7 1869, Murtaugh vs. St. Louis, 44 Mo. 479.

8 1914, Paterlini vs. Hospital Association, 241 Fed. 429.

tion of physicians and trained nurses, were kept there, as elsewhere, in the operating room for ready use. The nurse whose neglect caused the injury, without right or authority went to the operating room, saw there a bottle of 'mag' salts and a bottle of bichloride of mercury, each bottle properly labeled, and thus she was not deceived as to the contents of the bottles. Acting thus, without right or authority—it becomes clearly apparent that the distressing accident was due solely and only to the negligence of the nurse.[9]

"The right of the plaintiff to recover takes three aspects: First, the personal liability of the directors arising from any negligence on their part; second, the liability of the corporate defendant, the hospital, arising from the negligence of its officers; and, third, the liability of the hospital for the negligence of the nurse. . . ."

The proofs in this case showed that the executive work of the hospital was in charge of experienced and capable people, and there was entire absence of proof showing an act of commission or omission on the part of the directors, or on the part of any executive officer of the hospital. "In the absence of such proof, it is clear that the Court was justified, and indeed it was its duty to charge the jury that there was no proof that justified a verdict against the directors personally or against the hospital for negligence on the part of its executive officers. It follows, therefore, that the only ground on which the hospital could be held was for the negligence of the student nurse, and under the proofs that phase of the case resolves itself into the question whether the hospital is responsible for the negligent act of a nurse done without the knowledge of the hospital, outside the scope of her duty, and in violation of the rules of the hospital."[10]

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[9] 1918, Paterlini vs. Memorial Hospital Association of Monongahela City, Pa., 247 F. 639; 160C C. A. 49, affirming judgment (D. C.). Same vs. same, 241 F. 429, certiorari denied, 38 S. Ct. 334; 246 U. S. 665, 62 L. Ed. 929.

[10] 1918, Paterlini vs. Memorial Hospital Association, 247 Fed. 644.

The trustees of a home for indigent boys, maintained under a perpetual trust, the advantages of the institution being opened without compensation, and the trustees serving without compensation, having exercised ordinary care in selecting competent agents and servants, are not liable for injuries to a servant arising from the negligence of another servant or agent. 1906, Farrigan vs. Peaver, 193 Mass. 147, 78 N. E. 855.

Because the mother of a child contributed to the expense of its care, an institution caring for the child did not lose its charitable

§ 111. **Relation to Hospital of Physicians and Nurses.** In actions for malpractice brought by the patient, it has been held that the physicians and surgeons who are engaged in general practice, but who are on the staff of the hospital and rendering services gratuitously to the patients are not in reality servants of the hospital, and, therefore, the rule of respondeat superior cannot be applied to them.[11] It is said that this relation is not one of master and servant, but that the physician occupies the position, so to speak, of an independent contractor, following a separate calling, liable, of course, for his own wrongs to the patient whom he undertakes to serve, but involving the hospital in no liability, if due care is taken in his selection.[12] The hospital cannot direct his work and is consequently not responsible for it. He acts on his own knowledge and pursuant to his own discretion,[13]

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character so as to make it liable for the child's death, if due to the negligence of an experienced employe. 1909, Cunningham vs. Sheltering Arms, 135 App. Div. 178, 119 N. Y. S. 1033.

Whatever may be the principle that governs its liability for corporate neglect in the performance of a corporate duty, a charitable corporation which has no capital stock and whose members derive no profit from its operations, is not liable for injuries which result solely from the negligence of a servant in the performance of his duty, where the corporation has exercised due care in his selection. In such cases the servant alone is responsible for his own wrong." 1895, Hearns vs. Waterbury Hospital, 66 Conn. 98.

[11] While no decisions, so far as our researches disclose, have discussed whether this applies to physicians who are employed directly by the hospital, the assumption would be that in their professional actions they would be in the same position as other physicians.

[12] 1914, Schloendorff vs. Hospital, 211 N. Y. 125, 105 N. E. 92. See also, 1922, Taylor vs. Flower Hospital, 104 Ohio St. 61, 135 N. E. 287.

[13] "A physician cannot be regarded as an agent or a servant in the usual sense of the term since he is not and necessarily cannot be directed in the diagnosing of diseases and injuries and prescribing treatment therefor; his office being to exercise his best skill and judgment in such matters without control from those by whom he is called or his fees are paid." 1911, Arkansas Midland Ry. Co. vs. Pearson, 97 Ark. 399, 135 S. W. 917.

The doctrine of respondeat superior applies only in case of negligence of a servant who acts under the direction and control of the master, and does not apply to a physician or other professional man who, when employed, acts upon his own initiative and without direction from others. 1917, Norton vs. Hefner, 132 Ark. 18, 198 S. W. 97.

"A physician or surgeon employed by a railroad company to attend employes injured in its service is not a servant of the company so as to render it liable for his negligence or carelessness in rendering professional service. For the relation of master and servant to exist so as to make the master liable, he must not only have power to select and discharge the servant, but to direct the mode of executing, and to so control him in his acts in the

directs the progress of the case and the work of nurses and others.[14]

In Schloendorff vs. Hospital it was held that the hospital nurses while assisting a surgeon in an operation are not the servants of the hospital. "The acts of preparation immediately preceding the operation are necessary to its successful performance, and are really a part of the operation itself. They are not different in that respect from the administration of the ether. Whatever the nurse does in those preliminary stages is done, not as the servant of the hospital, but in the course of the treatment of the patient, as the delegate of the surgeon to whose orders she is subject. The hospital is not chargeable with her knowledge that the operation is improper any more than with the surgeon's."[15]

The further question remains whether such nurses, in carrying out the directions of the physician, are the servants of the hospital or the physician. Following the above reasoning, they should be considered as not being servants of the hospital.

"The surgeon may assume that the hospital and nurses are competent where there is no evidence that he is chargeable with knowledge of incompetence."[16]

In the case of Hunner vs. Stevenson,[17] an operating sur-

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course of his employment as to prevent injury to others." 1895, Quinn vs. Railroad, 95 Tenn. 713, 45 Am. St. Rep. 767

[14] Although the hospital has the right of control and discharge of the nurse, the physician may ask to have another called in her place. 1906, Stanley vs. Schumpert, 117 La. 255, 41 So. 565.

[15] 1914, 211 N. Y. 125, 105 N. E. 92.

[16] 1916, Morrison vs. Henke, 160 Wis. 166, 160 N. W. 173.

[17] "At this day," said the Court, "When it is well known that there are physicians and surgeons of special skill in particular branches of their profession, it could not safely be announced as a general rule of law, applicable to such cases as this, that a surgeon who performs an operation is liable for the negligence of other physicians, nurses, or internes in hospitals in the after treatment, unless he specially undertakes such employment. As a surgeon may be called many miles from his residence to perform an operation. it might mean either that one of special skill would refuse to perform such operations at distant points, or that his charges would be such that no one of moderate means could employ him. It might be detrimental to the public if such a surgeon was required to attend to the after treatment, as it would be impossible for him to do so and perform as many operations as some of them do. It would be unreasonable to expect such a one . . . to continue to dress the wounds and have personal charge of the after treatment in all cases until the patient is discharged from the hospital." 1913, 122 Md. 40, 89 Atl. 418.

geon who operated at a number of different hospitals, was held by the Court not responsible for the negligence of hospital surgeons, nurses, etc., in dressing wounds on a patient on which he had operated at a reputable hospital, if he had no knowledge of their negligent acts. The action was brought against the operating surgeon for damages which were caused by the hospital attendant's negligently leaving gauze in the wound after dressing it, "causing pulmonary tuberculosis."

Where the medical and surgical treatment of a patient was given in an infirmary and an operation was prescribed and performed by a surgeon under an independent employment by the patient, the infirmary corporation was not liable for his negligence, unskilfulness, or other wrong, although he was a shareholder and officer of the corporation.[18]

A physician who does not own or manage a hospital, and one who does not bring a patient there or advise his coming to the hospital, is not chargeable for default in the hospital equipment or management, unless, in the exercise of ordinary care, he should refuse to employ the hospital equipment, and should procure more suitable appliances, i. e., because of the delay in setting the fracture due to the want of proper splints, the absence of a fracture bed, and the failure to use ether or an x-ray machine, if the hospital did not provide them. "They—the defendants (physicians)—are not responsible for the breaking of the bed unless there was evidence that they knew or ought to have known its condition was such that it was likely to break down as it did. . . . They, of course, also were not responsible for any default of other employees of the hospital in the management of the case before or after they ceased to have charge of it."[19]

A physician who kept a hospital had treated a patient for some years, advised an operation, and procured a skilled surgeon to perform the operation for compensation agreed upon, to be paid by the patient. The physician took part in the operation to the extent only of administering the anesthetic, and advising that the effort to complete the opera-

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[18] 1915, Barfield vs. Infirmary, 191 Ala. 553, 68 So. 30.

[19] 1911, Burnham vs. Stillings, 76 N. H. 122, 79 Atl. 987. See also Contracts.

tion be abandoned on account of the patient's ebbing vitality. There was no suggestion that the physician showed any lack of skill or committed any error, or that he negligently advised the employment of an incompetent surgeon, and the physician was not held liable for any default on the part of the surgeon, who practiced his profession as an independent agent. The physician owning a hospital is not responsible for failure to furnish an adequately equipped place in which the surgeon may operate on a patient with safety. The responsibility for the sufficiency of the equipment rests on the surgeon performing the operation.[20]

A resident of Ohio employed a surgeon to treat him in Chicago, in a hospital incorporated for general hospital purposes, and under the management of a board of trustees. He came to Chicago, contracted with the hospital authorities for his room and accommodations, and received and paid for care and treatment from its regularly employed nurses and house physicians after the performance of a surgical operation by defendant, who was an independent practitioner, in addition to the after-care and treatment given by defendant. The general custom of such hospitals to furnish service, and the reliance thereon by an independent operating surgeon and by the patient therein for the usual care and after-treatment incidental to an operation, were matters within common knowledge and of which plaintiff was charged with notice. The Court states that the mere undertaking of a surgeon to operate did not imply his further undertaking to be personally responsible for the fault or negligence of hospital attendants, neither known to nor discoverable by him in the exercise of care and skill in the performance of his engagement.[1]

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[20] 1911, Robinson vs. Crotwell, 175 Ala. 194, 57 So. 23.

[1] 1910, Harris vs. Fall, 177 Fed. 79. A band of gauze was deposited in the kidney cavity and left there by an interne after an operation for the removal of the kidney.

In a case similar to the above in an action for professional services rendered in performing a surgical operation upon the defendant's wife, on the issue whether the plaintiff was responsible for the negligence of the nurses in the hospital where the patient was attended after the operation, it is competent to show that the plaintiff was not the proprietor or manager of the hospital, but that it was in charge of a Sisterhood; and it is immaterial that the patient supposed it to be the plaintiff's private hospital, neither the plaintiff nor any one acting for him ever having made any representation to that effect . . . 1892, Baker vs. Wentworth, 155 Mass. 338.

A surgeon performing an operation without his patient's consent, commits an "assault," for which he is liable in damages, except in cases of emergency where the patient is unconscious and it is necessary to operate before the consent can be obtained.[2] It has been held that "a hospital which is maintained as a charitable institution, whose visiting and resident physicians and surgeons served without pay, was not liable for their act in performing an operation without the patient's consent, where it furnished the operating surgeons the facilities of its surgical ward without knowledge that the operation was to be performed in disregard of the patient's instructions. This is true because, while the patient did not waive the right to damage, as in the case of negligent treatment, there is no relation of master and servant between a hospital and its physicians, and it does not undertake to act through them, but merely to procure them to act upon their own responsibility."[3]

The Court in this case held the evidence insufficient to show notice to its nurses that the physicians were performing or intending to perform an operation without the patient's consent, assuming they were its servants, and that it would be liable if, with knowledge, it permitted its facilities to be utilized for such a purpose without resistance or protest. It further held that the statement of a patient in a hospital to a physician who administered gas and ether to her that there must be no operation, but only another examination, did not charge the hospital with notice that the surgeons were operating without her consent, where the physician took no

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2 1914, Schloendorff vs. Hospital, 211 N. Y. 125, 105 N. E. 92.

3 " . . . the doctrine of respondeat superior applies only in case of the negligence of a servant who acts under the direction and control of the master (De Forrest vs. Wright, 2 Mich. 368) and does not apply to a physician or other professional man, who, when employed, acts upon his own initiative and without direction from others . . . Appellant was not guilty of negligence in the performance of the operation, nor in the selection of a physician to continue the treatment after he left the city. Not being negligent in those respects, he cannot be held responsible for the negligence of the other physician, who was left in charge, merely because the other physician took charge at his suggestion and arrangement." 1917, Norton vs. Hefner, 132 Ark. 18, 198 S. W. 97.

part in the operation, and did not seem to know that anything would be done except make another examination.[4]

§ 112. **What Constitutes Reasonable Care of Patients.** In some cases charitable hospitals have been held liable for negligence in caring for patients. The general limits of due care required by the hospital are set forth briefly in a few selected cases which follow.

To determine whether there was actual negligence on the part of the physician or nurses in not preventing a patient from injuring herself, and whether the institution was negligent in not providing more attendants as a precaution, the test is the same, viz., whether the circumstances of the case required more attention than was actually bestowed. The duty of care on the part of the institution is against those dangers which may reasonably be expected to occur.[5]

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[4] 1914, Schloendorff vs. Hospital, 211 N. Y. 125, 105 N. E. 92

Whether there was actual negligence on the part of the physician or nurse in not preventing a patient from injuring herself, and whether the institution was negligent in not providing more attendance as a precaution is a matter subject to the same test, viz., whether the circumstances of the case required more attention than was actually bestowed. 1891, Harris vs. Woman's Hospital, 27 Abb. N. Cas. (N. Y.) 37.

An action was brought against a hospital and the surgeons connected with its staff for burns from a hot water bottle, while the patient was unconscious after an operation. Where it was shown that the individual defendants, the operating physicians, carried the patient from the operating table to her bed, the defendants, the Court declared must be held to have assumed the duty to exercise ordinary care to know that the bed was safe, although the plaintiff had employed a special nurse. 1922, Harber vs. Gledhill, 60 Utah 391, 208 Pac. 1111.

Through the negligence of an orderly a hot water bottle was placed against the body of a patient, unconscious following operation. "The status of an orderly is determined by the nature of the work he is employed to do rather than by the payroll designation of his position . . . Here the orderly was engaged in a specific act of caring for the sick woman . . . He was not engaged in general work, such as running errands, lifting patients, or the like . . . The orderly so far as he was engaged in nursing, under the authority of the hospital, was supposed, like other nurses, to act on his own responsibility. If his act was unauthorized by the hospital, the rule of respondeat superior does not apply. In neither case, as between hospital and patient, was his negligence the hospital's wrongful act." 1924, Phillips vs. Buffalo General Hospital, 146 N. E. 199.

[5] The facts are that the deceased was operated upon Jan. 14, 1889. "The operation was apparently successful; but about four o'clock in the morning of January 19, while laboring under a temporary fit of insanity, she arose, unobserved, from her bed in the ward where she lay, and finding her way to the toilet room of that floor, leaped from the window and was killed by her fall of four stories to the ground below." 1891, Harris vs. Woman's Hospital, 27 Abb. N. Cas. (N. Y.) 37.

"There can be no charge of negligence unless there is a breach of duty imposed by law, and to ascertain whether there was negligence on the part of the hospital authorities in this case, the duty which the law imposes upon them must be considered. Their duty is to exercise ordinary and reasonable care in furnishing medical attendance and nursing to the patients whom they receive. This care is not to be apportioned to the amount of money which the patient contracts to pay, and is wholly irrespective of any consideration growing out of the fact that the sum paid, or agreed to be paid, is less than the actual cost to the institution of maintaining, treating, and caring for such a patient as of one who pays the highest price demanded for hospital accommodation. In this respect the same rule applies to hospital authorities as to individual physicians. . . ."[6]

In the case of Davis vs. Springfield Hospital,[7] a delirious patient threw himself out of the window, and the Court says: "Defendant's negligence was a question for the jury. There is no question as to the law being that defendant was required to use reasonable care and diligence not only in treating this patient for his illness, but also in safeguarding him from the danger due to his mental incapacity to care for himself.

"The degree of care and diligence required is measured both by the mental incapacity of the patient and the danger which the surroundings indicate may befall such patient. . . . The law only requires reasonable care, . . . that care to avert dangers which a reasonable man would take under the circumstances as they exist, . . . and no man does or is required to take measures to avert a danger which circumstances as known to him do not suggest as reasonably likely to happen."

The question may be asked here what constitutes reasonable care and treatment, what precautions must a hospital take in order to avoid the charge of negligence? In the case of the physicians it was found that ordinary care and skill must be exercised and in the case of employees discharged too soon after operation or treatment the same rule applied. In fact, the rule applies to the degree of care and skill exer-

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6 1891, Same, 27 Abb. N. Cas. (N. Y.) 37.

7 1920, 218 S. W. 696. Missouri.

cised by the hospital. These may involve questions of fact to be referred to and passed upon by the jury.[8]

In Torrey vs. Sanitarium[8] reasonable care was defined as follows: "Where a patient who voluntarily entered a private sanitarium, and after once leaving without permission returned and voluntarily consented to be removed to another ward where he should be practically a prisoner, the fact that those in charge did not, during the process of removal, forcibly restrain the patient, though an attendant walked by his side, does not show the proprietor was negligent, so one frightened by the patient who suddenly broke away and fled from the sanitarium, half dressed, could not recover."

The Court[9] set forth the issue thus: "It is to be remembered that the patient in question never exhibited symptoms of violence; that he came to the institution voluntarily, and was apparently normal and entirely tractable; that at the time of his escape there was a male attendant at his side; that an attempt to place greater restrictions on his liberty might easily have resulted in exciting the patient and producing serious results; and, further, that the defendant is a private institution receiving voluntary patients, and not a public institution receiving patients upon legal commitment. There are probably no questions more delicate than the questions arising as to the proper care of such patients. Humanity demands omniscience in that treatment. The same measures may produce the best results in some cases and the worst in others. The evidence impresses us with the belief that the defendant's employees were performing an exceedingly difficult task with all the care and caution which ordinarily prudent persons in their situation would deem it necessary to exercise."

In an action against a hospital to recover damages for loss and suffering occasioned by negligent burn caused by a

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[8] It is the duty of a sanatorium association to safeguard an insane person in the sanatorium from any danger due to his mental incapacity to care for himself, but in an action for negligent killing, the cause of death was held to be a question for the jury. "It was for the jury to say what would constitute ordinary care on the part of the defendant in taking precaution to prevent deceased from escaping during an irrational period." 1923, Bennet vs. Puritan Sanatorium Association, 213 Mo. App. 363, 249 S. W. 666.

[9] 1916, 163 Wis. 71, 157 N. W. 552.

hot-water bag, the evidence was held sufficient to sustain a finding that the condition of the plaintiff's back and the loss and suffering of which he complained at time of trial was the natural result of the burn received, and was not due to infection occurring from lack of care of the burn by plaintiff's physician.[10]

It may be considered negligence for those in charge of a hospital to have a solution of bichloride of mercury on a chiffonier in a patient's room where it might be reached by him while delirious.[11]

A person receiving an infant of tender years in charge, gratuitously or otherwise, owes him the legal duty of due care to prevent injury to him.[12]

Reasonable care is all that is required. A hospital for the use of railroad employees received a patient who was operated upon for appendicitis and placed in a room on an upper floor under the care of skilled nurses. The window was not barred. The patient was at times delirious, and during the absence of the nurse threw himself from the window and was killed. The Court held that since the patient had shown no symptoms of suicidal mania, the defendant was not liable for his death; "such result not being the natural consequence of defendant's failure to bar the window,

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[10] 1921, Tucker Sanitarium vs. Cohen, 129 Va. 576, 106 S. E. 355.

[11] In an action against a hospital association for the death of a patient alleged to have drunk a poisonous disinfectant left in his room when he was delirious, the Court properly instructed that declarations of the patient that he drank the solution, that he did so to end the pain and end it all, and he knew it was poison, could be considered only in determining his mental condition and with what intent he took or attempted to take the poison, if he did take it. 1915, Wilbur vs. Hospital Assoc., 27 Cal. A. 751, 151 P. 155.

In the case of Tucker Sanitarium vs. Cohen the action was instituted for damages alleged to have been occasioned while he was an inmate of the hospital conducted by plaintiff, by the negligent application or failure to remove hot-water bags from the back of Cohen, as the result of which negligence he received, as alleged, a serious burn on the back. Trial by jury resulted in a verdict in favor of the plaintiff for $2,000. The hospital moved to have it set aside as contrary to law, and not supported by evidence, and excessive damages. Case affirmed. 1921, 129 Va. 576, 106 S. E. 355.

[12] A hospital which permitted a four months old child to come in contact with a steam pipe, causing death, while the child's mother was undergoing treatment, broke its express contract to receive the child under its care and safeguard him while his mother was being treated. 1916, Roche vs. St. John's Riverside Hospital, 96 Misc. Rep. 289, 160 N. Y. S. 401.

for it could not be assumed that delirium would cause self-destruction.''[13]

Where a hospital in which there was a patient suffering from smallpox received a plaintiff's wife as a pay patient therein without informing her or her relatives of the existence of the smallpox, but her physician knew of its presence, and plaintiff's wife was assigned to a room in the building apart from that in which the smallpox patient was, and the strictest precautions were taken to prevent the spread of the disease, the failure to notify the plaintiff or her relatives of the presence of smallpox was not negligence which renders the hospital liable for the death of plaintiff's wife resulting from smallpox contracted therein.[14]

''We cannot see,'' said the Court, ''how the Sisters can be held negligent for doing that which the most eminent medical authorities, with a full knowledge of the situation, regarded as safe. Plaintiff's wife in some unaccountable way may have contracted the disease from cases which occurred in the hospital, but the hospital authorities could not, in the circumstances, have reasonably anticipated that she would contract the disease, and cannot, therefore, be held to have been guilty of negligence in failing to inform her when she

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13 1915, Breezer vs. St. Louis and St. Fe Railway Co., 264 Mo. 258, 174 S. W. 409.

14 1915, Jones vs. Sisters of Charity, 173 S. W. 639. Texas.

A more recent case involved the question of the contraction of smallpox by a patient. The hospital received both charity and pay cases and received them on application of a physician with his accompanying diagnosis. The nurses and attendants had nothing to do with the making of diagnoses, "and in caring for cases are required to follow the directions of the physician in charge of each particular patient." It seems that the intestate entered the hospital, underwent a surgical operation and returned home. Later, he developed smallpox. The Court points out that the following facts must be established: (1) "That the plaintiff's intestate died of smallpox; (2) that he contracted the disease while he was a patient in the defendant's hospital; (3) that this resulted from infection communicated to him from another patient who was in the hospital during the intestate's presence there; (4) that the defendant's nurses, agents or servants who controlled or managed the hospital knew that such other patient was afflicted with smallpox; and (5) that they so negligently handled said patient that they negligently exposed the intestate to infection from him." There, apparently, was nothing to indicate the presence of smallpox within the institution. The point is that one man with a "humpy and scabby face" was declared by the witnesses to have smallpox, but the case had not been so diagnosed by the physicians after careful observation. 1923, Gadsen General Hospital vs. Bishop, 209 Ala. 272, 96 So. 145.

applied for admission that there was a case of smallpox in the hospital."

A hospital cannot be held liable for failure to perform an operation. It seems that the decedent was brought to the hospital after a fall occurring elsewhere, with which accident the cause of death was plainly connected, the immediate cause being cerebral compression and hemorrhage. The Court held that no right of action accrued to the plaintiff against the defendant, upon the sole ground that defendant failed to cause decedent to be operated upon in order to save his life, for the reason that the statute discussing the matter of death caused by a wrongful act refers to the direct cause which without the intervention of any other cause, produces death, and does not include a failure to arrest the natural progress of accidental injuries. The Court said: "Erickson was sent to the hospital by Dr. Owen, chief surgeon of the Chicago & Northwestern Railroad, under an arrangement between him and the defendant by which defendant was to furnish 'board' and a nurse. Medical attendance apparently was to be furnished by Dr. Owen. So far as the evidence discloses, the hospital was merely a place for boarding and nursing patients under his care. There being no obligation shown by the evidence upon defendant for the services of a physician, it follows there can be no recovery against it for any failure to operate on Erickson."[15]

Recovery against a hospital has been permitted when the condition of the hospital premises is found to be unsafe and evidence that a heavy storm, by reason of a defect in a window sash which was easily fixed, caused water to settle in a hospital room where plaintiff's wife was confined, and that she developed pneumonia, and died several months later, has been held a jury question as to whether her death was caused by the water allowed to gather through defendant hospital owner's negligence.[16]

§ 113. **Liability to Pay Patients.** By almost unanimous opinion it is held that hospitals maintained as charitable institutions are not liable for the negligence of their physicians

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[15] Cite Martin vs. St. Luke's Hospital, 195 Ill. App. 388.

[16] 1915, McInerny vs. St. Luke's, 122 Minn. 10, 141 N. W. 837; 1914, Hospital of St. Vincent vs. Thompson, 116 Va. 101, 81 S. E. 13; 1917, Bailey vs. Long, 94 S. E. 675. N. C.

and nurses in the treatment of pay patients any more than for those who do not pay. The Ohio Supreme Court in Taylor vs. Flower Deaconess Hospital[17] set forth the situation as follows: "In our day there is a general tendency in all persons to resort to hospitals in cases which require surgical operations, or in cases of severe sickness, and for obvious reasons it is desirable that such an institution should neither be held out as devoted solely to the poor nor to the rich, and the degree of care should in all cases be the same. The same rule should apply to a pay patient as to one who does not pay, and there is general agreement on this proposition."

As in the matter of tax exemption, the requirement or acceptance of pay from patients able to pay does not change the status of the institution. A hospital which charged its needy patients nothing for board or treatment, but charged the well-to-do an amount insufficient to cover the per capita cost of maintenance, the income thus received being added to that derived from the hospital's foundation, and helping to make it possible for the work to go on, did not change its standing as a charitable institution.[18] Pay patients and charity patients are on the same level of rights. It has been held that a charity patient has precisely the same right of action for malpractice as one who pays for the attendance. A hospital not run for profit, and which in fact did not make any profits, was not liable to a pay patient for negligence of its employees where no negligence was shown in employment of incompetent employees.[19]

"The fact that the plaintiff paid the regular rates charged by the hospital for paying patients, does not take the case out of the operation of this rule, for it is apparent that the rates were not charged with a view of making a profit from her, and the moneys received from patients were not in fact sufficient to meet even the ordinary operating expenses of the hospital, without considering any interest upon the amount invested in the building. It is clear, therefore, that plaintiff was to some extent the beneficiary of the charity for

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17 1922, 104 Ohio St. 61, 135 N. E. 287. See also, 1924, St. Vincent's Hospital vs. Stine, 144 N. E. 537, Ind.

18 1890, People vs. Purdy, 58 Hun. 386, 12 N. Y. S. 307; affd. 126 N. Y. 679.

19 1891, Harris vs. Woman's Hospital, 27 Abb. N. Cases (N. Y.) 37.

which defendant corporation was organized, and comes within the rule quoted."[20]

§ 114. **Injuries to Persons Not Patients.** The reasons that have led to the adoption of this rule of the relationship or guardianship of the hospital and patient are, of course, inapplicable where the wrong is committed by a servant of the hospital against an outsider not a patient. It is, therefore, also a settled rule that a hospital is liable to strangers—i. e., to persons other than patients—for the torts of its employees committed within the line of their employment.[1]

A recent case in Massachusetts has waived the distinction between the stranger and patient, saying, "these trust funds cannot be used to compensate wrongs committed by agents of those administering the funds; there is no ground for distinction between liability to a patient and liability to a stranger. If, as a matter of public policy, there now should be a modification of its law in this Commonwealth exempting

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[20] 1918, Burdell vs. St. Luke's Hospital, 173 Pac. 1008, 1009. Col.

A charitable institution conducting a hospital does not, by accepting compensation from a patient who is able to pay for room, board, and care, incur liability to such patient for the negligence of nurses. 1910, Gable vs. Sisters of St. Francis, 75 Atl. 1087. Penna.

Such payment is regarded as a contribution to the income of the hospital, to be devoted like its other funds to the maintenance of charity. 1914, Schloendorff vs. New York Hospital, 211 N. Y. 125, 105 N. E. 92.

See also, 1924, Doty vs. Lutheran Hospital Association, 194 N. W. 444. Neb.

The character of an institution as a "public charity" is not affected by charging those able to pay for use of its rooms. 1910, Jensen vs. Maine Eye and Ear Infirmary, 107 Maine 408, 78 Atl. 898.

"A sanitarium which is organized to nurse and restore to health the sick and minister to the unfortunate of every creed and nation, any profits put back when earned, and none of its income or gifts diverted to promote gain or profit, is purely a public charity." 1921, Barnes vs. Providence Sanitarium, 229 S. W. 588. Tex.

[1] 1911, Kellogg vs. Church Charity Foundation, 203 N. Y. 191, 96 N. E. 406. 1917, VanIngen vs. Jewish Hospital of Brooklyn, 164 N. Y. S. 832; affd. 169 N. Y. S. 412.

In the case of a person who accompanied a sick friend to a hospital it has been held that the hospital was bound to use ordinary care to have its premises in a reasonably safe condition. 1914, Hospital of St. Vincent vs. Thompson, 116 Va. 101, 81 S. E. 13.

The doctrine that a charitable institution conducting a hospital solely for philanthropic and benevolent purposes, is not liable to inmates for the negligence of its servants, does not extend to a physician who, by invitation, enters the hospital with a patient to procure a radiograph for the latter and is injured through the negligence of the x-ray operator . . . 1918, Marble vs. Nicholas Senn Hospital Association, 123 Neb. 343, 167 N. W. 208.

charitable organizations from liability for the negligence of servants such change must be made by the Legislature.''[2]

§ 115. **Injuries to Employees.** While charitable hospitals are held by the weight of judicial opinion exempt from liability for injuries to the recipients of their charity, no such exemption applies to injuries to others. Even though it has been proved that there was due care in the selection of the agents or servants, where the relation of patient does not exist, and when the hospital would otherwise be liable, there is no exemption of the hospital.[3] In the absence of statutory or constitutional exemption, charitable hospitals, along with other businesses, are liable for damages to employees and to others who are not patients in the hospital.

The workmen's compensation laws of the states vary with respect to the liability for injuries to employees which they impose. Some exempt charitable institutions altogether; others specify the industries to which they apply and may or may not include hospitals in the list.[4] If charitable institutions are included, then the liability is exactly like that of profit-making enterprises. In the absence of liability under the workmen's compensation laws, charitable institutions would be subject to the employer's liability laws of the State so far as applicable.

Two cases arising in New York State indicate the status of charitable institutions under the compensation law. In Dillon vs. Trustees of St. Patrick's Cathedral in the City of New York, it was held that a religious corporation selling

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2 1924, Foley vs. Wesson Memorial Hospital, 141 N. E. 113. Mass. Two persons walking on the sidewalk were struck by an ambulance being negligently driven. It was admitted that the plaintiffs were careful and the employee negligent. The only question before the Court was the exemption of the institution from such liability. The Court points out that the immunity of the hospital for the negligence of servants rests on the theory "that the funds of a public hospital are devoted to a charitable trust and that to subject them to the payment for negligence of its servants would be an unlawful diversion of the trust." This non-liability in the opinion of the courts extends both to incompetent subordinates and subordinates selected with care.

3 1912, Basabo vs. Salvation Army, 35 R. I. 22, 85 Atl. 120.

4 Where the compensation law does not require but permits charitable institutions to qualify within the law and an institution elects with its employes to insure, such an institution "having accepted its premium, is bound to the same extent as if gain rather than benevolence inspired its activities." 1923, Bernstein vs. Beth Israel Hospital, 140 N. E. 694, 236 N. Y. 268.

burial privileges in its cemetery and devoting its net proceeds to religious or charitable purposes is not conducting a business for "pecuniary gain," consequently is not included within the Compensation Act.[5]

The claimant in the following situation was an intern or junior house physician. He had performed an autopsy under the direction of the superintendent and was sewing up the corpse when the needle slipped and punctured his finger. This was followed by blood poisoning. The Court points out that in this there is the relation of hospital and physician and not of hospital and patient. Liability in the former case is determined by the contract expressed or implied between the hospital and the physician, and in the latter case by the contract expressed or implied between the hospital and the patient. This first relationship between the hospital and physician (the intern) is a relationship of employment and distinction is further made between the position of the visiting or consulting physician and that of the intern who has placed his time and service at the call of his superior. The business was not conducted for gain and consequently not within the compensation law, but since the hospital and its employees had elected to come under the provisions of the law, the law would be applied "to the same extent as if gain rather than benevolence inspired its activities."[6]

In a case[7] involving a suit for negligence in failing to

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[5] 1922, 234 N. Y. 225, 137 N. E. 311.

The respondent in this case was employed as a laborer in the Cathedral's cemetery. While he was excavating the foundation for a monument, he was injured by the negligence of the appellant. The employment was admittedly a hazardous one, and yet the appellant had not protected its employee under the provisions of the Workmen's Compensation Law. Action was brought to recover damages, the question being whether the compensation law applied. The Court quotes Sec. 3, Subd. 5, defining the employments included as "employment only in a trade, business, or occupation carried on by the employer for pecuniary gain or in connection therewith". Only in case the workman is engaged in employment so defined does the act apply and the business was not conducted "for pecuniary gain."

[6] The fact that the interns in the hospital receive no money for their services, "but only lodging, board and uniforms, does not defeat their right to award under the statute . . ." "Wages mean the money rate at which the service is recompensed under the contract of hiring in force at the time of the accident, including the reasonable value of board, rent, housing, lodging, or similar advantages received from the employer." 1923, Bernstein vs. Beth Israel Hospital, 236 N. Y. 268, 140 N. E. 694.

[7] 1906, Hewett vs. Woman's Hospital, 73 N. H. 556, 64 Atl. 190.

notify a nurse of the contagious nature of a case assigned to her, the Supreme Court of New Hampshire said: "That a charitable institution has certain duties to perform toward those with whom it is associated, which it cannot violate with impunity, in the absence of some express exemption of a legislative character, is not debatable. The sanctity of its general trust fund or property does not make that result necessary or, on grounds of public policy, desirable. The duties of the defendant to the plaintiff when she was employed to nurse a diphtheria case had their inception in the contract of employment. She was engaged to do a necessary part of the work of maintaining a hospital for the sick. For this labor she was paid. . . . An apprentice learning a trade occupies the position of a servant with reference to his employer, and obviously the latter's duty to inform him of the dangers of his occupation is greater than in the case of an experienced workman. . . . She was doing the defendant's proper work under its direction, and for its benefit in the discharge of its assumed duties. She was as much an employee of the hospital in respect to this particular work as she would have been if she had been a graduate nurse receiving full nurse's pay. The fact that, at the time she was employed, she represented herself to be older than she was, did not relieve the defendant of its ordinary duty to her as its servant.

"It was his duty arising from his employment of her, or from the contractual relation of master and servant existing between them, to warn her of the danger incident to the service which he knew or under the circumstances ought to have known, and of which he knew she was ignorant, though in the exercise of ordinary care. And this duty is a non delegable one."[8]

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8 62 Atl. 592, quoted in 1906, Hewett vs. Women's Hospital, 73 N. H. 556, 64 Atl. 190.

In Horden vs. Salvation Army, the New York Court of Appeals declared that where a journeyman mechanic was engaged in making repairs on a boiler on the premises of the Salvation Army, the latter was not relieved from liability for negligence of its agents and servants on the theory that the rule of respondeat superior does not apply to such corporation . . . and that whether the character of the runway was such as to warrant an inference that defendant devoted ordinary care was for the jury." Continuing, the Court denied the that to subject "being a charitable or religious society the rule of ment for negli ior does not apply. 1910, 199 N. Y. 233, 92 N. E. 626. vants would b ainst an incorporated church for an injury received

A religious corporation organized to operate a hospital is not exempted from liability for injury sustained by an employee through negligence chargeable to it, though money received in payment for services was expended in maintaining the institution for the benefit of the poor, to pay off a mortgage on its property, and to support its mother institution located in another state.[9]

Still later the Court declared:[10] "It is the duty of a master to warn and instruct a minor servant as to dangers incident to service which are known to the master, or could be known by reasonable care, and which the servant, because of immature judgment and want of experience cannot reasonably be expected to know and appreciate. . . . A minor servant, of capacity to appreciate the dangers, and who has acquired the knowledge otherwise than by instruction from

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by the plaintiff while at work on its church building, a declaration alleging that while the plaintiff was at work for a contractor of the defendant, the scaffolding on which he stood, and which was furnished by the defendant, was defective, so that it broke and caused the plaintiff to be thrown to the floor and injured, is not demurrable on the ground that the defendant, as a corporation administering a charitable trust, is not liable for the neglect or default of its agent or servant having the care or custody of its property. 1907, Bruce vs. Central M. E. Church, 11 Ann. Cas. 150, 147 Mich. 230.

On the other hand, in another case it has been declared that a fireman injured through the defective condition of a fire escape attached to realty of a charitable corporation administering a trust fund for the care and cure of indigent insane, could not recover damages, for tort from a fund held in trust for charitable purposes. 1917, Loeffler vs. Trustees of Sheppard and Enock Pratt Hospital, 130 Md. 265, 100 Atl. 301.

In Garland vs. New York Zoological Society, a steam-fitter's helper, while performing work in a building occupied by defendant Zoological Society, under a contract with plaintiff's employer, was injured by the negligence of an employe of defendant in blowing up of its boilers located in such buildings kept and maintained by defendant for purposes of recreation, incidental education, etc., under a charter from the State and a contract with the city. Since the plaintiff was not on the premises as a beneficiary of charity, the defendant was liable for the negligence of its servants, even though it was a charitable institution. 1909, Garland vs. New York Zoological Society, 135 App. Div. 171, 120 N. Y. S. 24.

9 1912, Hotel Dieu vs. Armendarez, 145 S. W. 1030, reversed by 167 S. W. 181. Tex.

"A charitable hospital which administers to the sick of all nations and creeds, accepting pay if the patients are able to pay, but otherwise rendering the service gratuitously, is liable for damages to an employe for personal injuries sustained through its negligence, and its property is not exempt from execution to enforce the payment of such demand." 1914, Hotel Dieu vs. Armendarez, 167 S. W. 181. Tex.

10 Hotel Dieu vs. Armendarez Tex. 210 S. W. 518 affirming judgment (Civ. App.); same and Armendarez, 167 S. W. 181 (1919).

the master, need not be warned or instructed, but the mere fact that the servant knows that the employment is dangerous does not relieve the master of further instruction as to the extent of the danger and the means of avoiding it."

A religious hospital corporation operating a laundry has been held liable for injury to a minor servant resulting from the failure of the forewoman on request to instruct her as to the way to stop the mangle before extricating clothes clogging it, and thus to avoid danger; the hospital's duty to instruct and warn being non-delegable.

A Minnesota law imposing on all persons and corporations owning or operating dangerous machinery, so far as practicable, applies to charitable associations owning or operating such machinery, as well as to all other persons or corporations similarly situated.[11]

The duty thus imposed is absolute and non-delegable, and a failure to discharge the same renders the charitable association liable to its servants and employees who are injured in consequence of that neglect. A housekeeper on October 21, 1910, while engaged in ironing some window curtains for a hospital caught one of her hands between the heated rollers of the mangle she was using, and burned it to such an extent as to necessitate the amputation of the greater part thereof. The Court said: "Our view is that the duty created by law for the protection of servants is absolute, and no employer should be exempt therefrom, except by action of the Legislature. No public good can come from permitting one charitable corporation, by the failure of a duty imposed by law, to maim and disfigure its servants and employees, when, depending upon the nature of the injury, their future welfare must of necessity be looked after by some other charitable association, public or private, or by already overburdened or poverty-stricken relatives and friends. . . . Nor are we to be understood as holding that the trust funds of the defendant may be applied to the payment of this verdict. The question is not involved. The defendant is not supported exclusively from such funds; on the contrary, its maintenance would seem from the evidence to come principally from patients who pay for services rendered them."[12]

11-12 1913, McInerny vs. St. Luke's Hospital Association of Duluth, 122 Minn. 10, 141 N. W. 837.

§ 116. **Liability of Physicians to Patients.** It is not the intention here to go into the subject of medical liability, but merely to give some illustrative cases of the liability of physicians on hospital staffs, as distinguished from that of the hospital.

The Supreme Court of Montana recently said that a physician is not liable for negligence in treatment merely on account of errors of judgment resulting in incorrect diagnosis, or because other physicians might have adopted other methods. If the method adopted has substantial medical support, this is sufficient, and where there is a difference of opinion, a physician may exercise his own best judgment. Incorrect diagnosis of itself is insufficient to establish liability.[13]

In another situation, if a patient was incapable of consenting to the amputation of a leg, and if the necessity therefor was extremely urgent to save her life, a surgeon treating her had a right to consult with her mother and to act upon her mother's consent as the implied consent of the patient; and hence, where there was evidence of these facts, it was not error to admit evidence, in an action for malpractice, that the mother consented and stated that the patient had consented. . . . Where a patient voluntarily submits to an operation by making no objection, though she knows it is about to be performed, her consent thereto will be presumed, unless it is made reasonably clear that she was the victim of a false and fraudulent representation.[14]

Unless it is expressly provided by contract, a physician or surgeon does not warrant that he will effect a cure, or that he will restore the patient to the same condition as before the necessity for treatment arose, or that the result of the treatment will be successful and a physician or surgeon, possessing the requisite qualifications and applying his skill and

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13 The Murray Hospital was under contract with the Anaconda Copper Mining Company to furnish surgical and medical care, treatment, and attention for which service the employees paid a stated sum per month during employment. After receiving injuries, an employee, Currier, was taken to the hospital and placed under the care of its physicians. His hip was examined and a diagnosis of dislocation of hip joint was made and the hip treated for fifty days. No x-ray was taken, although the apparatus was at hand. It was alleged Currier was suffering from an impacted fracture of the hip joint, and that there was negligence in not taking the x-ray. 1920, Schumacher vs. Murray Hospital, 58 Mont. 447, 193 Pac. 397.

14 1915, Barfield vs. Infirmary, 191 Ala. 553, 68530.

judgment with ordinary care and diligence to the diagnosis and treatment of the patient, is not liable for an honest mistake or error in prescribing a mode of treatment where there is ground for reasonable doubt as to the practice to be pursued.[15]

A recent Oklahoma case holds that the admitted negligence of the hospital may be imputed to the operating surgeon. The sanitarium here had no medical staff of its own and all medical and surgical treatment was supplied from outside the institution.

"The operating surgeons, the defendants in this case, went there (to the sanitarium) to perform the operation. In the performance of the operation, the hospital permitted and the surgeons consented to use its general employees in the performance of the operation. While the head nurse and her assistants were the general employees of the El Reno Sanitarium, they were, nevertheless, during the time required for actual operation, under the direction and supervision of the operating surgeons, and were the servants of the operating surgeons in respect to such services as were rendered by them in the performance of the operation, and for any negligence on the part of such services the operating surgeons are liable."[16]

There is no contract between the patient and the physician concerning hospital care where the patient employs a hospital to treat him without advice or suggestion from the physician. In the case of Burnham vs. Stillings[17] it was said by the Court:

"So far as the plaintiff employed anyone to treat him, he employed the hospital without advice or suggestion from the defendants. So far as the defendants were employed by anyone, they were employed by the hospital. As there was no contract between the plaintiff and the defendants, they owed him no duty imposed on them because of, or in any way springing from, the contract of employment. They owed him,

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15 1915, Same, Barfield vs. Infirmary, 191 Ala. 553, 68 S. 30.

16 1923, Aderholt vs. Bishop, 94 Okla. 203, 221 Pac. 752.

During an operation for goitre the patient's ankles were scalded by hot water dripping on her from the gauze cloths wrung out by the nurse and handed to the physician to take up the blood which oozed from the incision and severed blood vessels. The injury it was admitted was due to the negligence of the nurse and other employees.

17 1911, 76 N. H. 122, 79 Atl. 987.

however, the duty in the course of their employment not to do anything they either knew or ought to have known would injure him. Having with his assent undertaken to treat the plaintiff, the defendants were bound to exercise care in what they did, and are liable if their failure to exercise ordinary care injured him."

The liability of the surgeon for negligence on the part of the hospital or its attendants and the liability of the hospital for the negligence or unauthorized acts of the surgeon have been discussed briefly early in this chapter, where it was shown that physicians on the staff of the hospital but who are engaged in general practice, and who gratuitously treat the patients of the hospital, are not in reality servants of the hospital to whom the rule of respondeat superior applies or can be applied.

In the Schloendorff case[18] it was shown that a surgeon who performs an operation without the consent of his patient commits an assault for which he is liable in damages, except in emergency cases where the patient is unconscious and it is necessary to operate before consent can be obtained. In that case where the hospital furnished the operating surgeons the facilities of its surgical ward without the knowledge that the operation was to be performed in disregard of the patient's instructions; there was shown to be no relation of master and servant between the hospital and its physicians, since the hospital does not undertake to act through the physicians[19] but merely to procure them to act upon their own responsibility.

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18 1914, Schloendorff vs. Society of New York Hospital, 211 N. Y. 125, 105 N. E. 92.

19 Following injury in an automobile accident the patient was taken to a sanatorium where alleged unskilful and negligent services were given by the surgeon, the agent of the stockholders of the corporation. The Court said, "Where a hospital contracts to furnish medical or surgical attention to one, and acts in good faith and with reasonable care in the selection of a physician or surgeon, and selects an authorized physician in good standing in his profession, it has fulfilled its obligation, and cannot be held liable for any want of skill on the part of the surgeon employed. The master is held liable for the tortious acts of the agent upon the theory that the agent is controlled and acts under the direction of the master and within the scope of his duties. There is no allegation in the petition to the effect that the sanatorium company directed the physician how or in what way to treat the patient." 1924, Black vs. Fischer, 30 Ga. App. 109, 117 S. E. 103.

A hospital is not liable for the mistreatment by a physician of one furnishing blood for trans-

In Barfield vs. South Highland Infirmary, although the surgeon was an officer and shareholder in the corporation, the corporation was not liable for his negligence where the medical and surgical treatment and an operation were prescribed and performed by a surgeon under an independent employment by the patient.[20]

The physician undertaking to treat a hospital patient must exercise ordinary care and is liable for failure to exercise such care; but where a physician neither owns nor manages the hospital and neither brings nor advises the patient to be brought to the hospital, he is not chargeable for default in equipment of management, unless in the exercise of ordinary care he should refuse to employ the hospital equipment and procure more suitable appliances.[21]

A physician, failing to exercise such reasonable care and skill as physicians in the same general line of practice ordinarily exercise in like cases, is civilly liable for injuries to a patient.[1]

In the performance of a surgical operation and in undertaking to give subsequent care to a case, the surgeon incurs the obligation to exercise throughout the performance of his engagement both the ordinary care and skill of his profession in the light of modern advancement and learning on the subject, and his own best ability, skill, and care.[2]

Physicians and surgeons are required to exercise ordinary skill and diligence; that is, the average of that possessed by the profession as a body, and not by the thoroughly educated alone, having regard to the improvements and advanced state of the profession at the time of the treatment.[3]

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fusion. The plaintiff in the case volunteered her services not to the Sanatorium but to the patient who was being treated and the doctor treating the patient. 1922, Jeter vs. Davis Fischer Sanitarium Co., 28 Ga. App. 708, 113 S. E. 29.

20 1915, 191 Ala. 553, 68 So. 30.

21 1911, Burnham vs. Stillings, 76 N. H. 122, 79 Atl. 987.

1 1911, Robinson vs. Crotwell, 175 Ala. 194, 57 So. 23.

2 A malpractice suit was brought by a patient who had a temperamental or physical weakness which could not be foreseen, and which contributed to the failure of an operation performed by the physician. The Court stated that the physician was liable, if he contributed to the patient's injury by a failure to exercise due care and skill, or by performing on the patient a serious operation without his knowledge and consent . . . 1910, Harris vs. Fall, 177 Fed. 79.

3 In an action for negligently performing a surgical operation on the plaintiff's eye which is alleged to have caused a loss of the plaintiff's sight, the Court admitted evidence that the disease from which plaintiff was suffering generally resulted in a loss of

Even where the hospital superintendent agrees to furnish, selects, and receives the compensation for, the services of a surgeon, the hospital cannot be held liable for his negligence.[3]

Where a hospital was a public charitable institution, it was not liable for the negligence of a surgeon in operating on a patient who paid only for board and attendance and not for the surgeon's services, in the absence of proof that the hospital failed to exercise reasonable care in the selection or employment of the surgeon. The superintendent of a public charitable hospital had no authority to contract on its behalf to furnish surgeon's services to a patient, and the hospital was not liable for the negligence of a surgeon in treating the patient, although the superintendent agreed that the price charged the patient for board and attendance included compensation for surgical attendance and treatment.[4]

§ 117. **Damages Caused by Ambulance Drivers.** In an action[5] for damages to an automobile which was struck by a negligently driven ambulance, driven by an employee of the garage in which ambulance was being kept, the question of whether the hospital or garage company was responsible for the accident was involved. Instruction was given that, if an orderly of the hospital participated by direction, interference, or suggestion in the speed of the ambulance or in the cutting of the corner at which the accident occurred, his negligence was chargeable to the hospital and was held justified by the evidence. The question of which was responsible was held to be one for the jury.

Since an ambulance is entitled to the right of way against an ice wagon, under the laws of New York,[6] the ambulance driver may assume that the driver of the ice wagon will heed the ambulance bell and the driver's shouting, and, where the ambulance driver was injured by a collision, a judgment for damages will not be disturbed, if the issues were fairly submitted, and the burden of proof imposed on plaintiff.[7]

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sight. 1893, Peck vs. Hutchinson, 88 Iowa 32, 55 N. W. 511.

4 1904, Wilson vs. Brooklyn Homeopathic Hospital, 97 App. Div. 37, 89 N. Y. S. 619.

It is the duty of the physician attending patients afflicted with infectious or contagious disease to advise concerning danger of infection. 1921, Davis vs. Rodman (Ark.), 227 S. W. 612.

5 1919, Baker vs. Allen and Arnick Renting Co., 179 N. Y. S. 675.

6 Laws of N. Y. (1879), Ch. 186.

7 1889, Byrne vs. Knickerbocker Ice Co., 4 N. Y. S. 531.

In an action against the operators of a hospital ambulance for personal injuries caused by the negligence of the ambulance driver, it is no defense that defendants were operating under a contract with the city which provided that they were to answer all calls from the city dispensary, and be subject to the direction of the dispensary surgeon. It is the duty of pedestrians passing over street crossings in a city to exercise care commensurate with existing dangers, though it is not necessary that they stop and listen. The fact that an ambulance which struck down a pedestrian at a street crossing was going at a high rate of speed in order to save life is no defense to an action for damages for the personal injuries sustained by such pedestrians. . . . "We cannot escape the fact," said the Court in this case, "that the driver of the ambulance was still the servant of the appellants, and that the master is liable for the wrongful, careless, and negligent acts of the servants while acting within the scope of his authority or duty."[8]

In Van Ingen vs. Jewish Hospital of Brooklyn[9] it was said that a charitable corporation is liable for its servant's negligence, except to its beneficiaries and patients. The driver of a hospital ambulance is personally liable for negligently injuring a person, although the hospital is a charitable organization and he was responding to a city police call.

A charitable hospital is liable where its ambulance driver negligently ran over a person while answering a city police call, especially where the city paid it for such services. "The defendant is a charitable organization, maintaining a hospital in which the poor are treated without charge, and in which those who can afford it are required to pay. . . . There is no good reason why the defendant should not be held liable for the negligent acts of its chauffeur. It is in an entirely different situation than a municipality. The defendant was not obliged to undertake the performance of governmental functions. It was free to undertake the work or not, as it wished. It was not required to do it for the city. Having voluntarily assumed the work, it should not be exempt from liability when it is paid for rendering the service. There is no hardship to the defendant in enforcing the rule. It was

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8 1899, Green vs. Eden, 24 Ind. App. 583, 56 N. E. 240.

9 1917, 164 N. Y. S. 832, affd. by 169 N. Y. S. 412. 1918.

not obliged to maintain ambulance service for the city. When it saw fit to do so, whether for profit or for no profit, it necessarily assumed a responsibility which included a liability to strangers injured through the carelessness of its servants. If it would be relieved of this liability, it should not operate an ambulance."

The foregoing judgment was affirmed in Van Ingen vs. Jewish Hospital of Brooklyn,[10] where it was held that a charitable hospital, which paid its attendants, orderlies, and servants, though it did not pay its officers or directors, and which was supported by voluntary contributions, endowments, specific gifts, and amounts paid by certain classes of patients, is liable for the negligent operation of a motor car ambulance, where the driver was engaged and paid by the hospital, though the ambulance was at the service of a municipality to answer police calls; since it appeared that the hospital received compensation from the municipality for furnishing such service.

. . . "Where plaintiff, a nurse in a public institution, who had been furnished by her employer with a car, hired with its driver to carry crippled children home, was injured by a collision, the negligence of the driver is not imputable to her.

"Where the driver of a defendant's motor ambulance, while proceeding at a rapid rate of speed, turned his vehicle so that it struck the car in which plaintiff was riding, and such turn was unnecessary, the negligence of the driver cannot be excused, on the theory that he was guilty of a mere error in judgment, there being no emergency which justified the turn."[11]

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10 1918, 169 N. Y. S. 412, 182 App. Div. 10, affirming judgment 164 N. Y. S. 832, 99 Misc. Rep. 655.

11 1918, Van Ingen vs. Jewish Hospital of Brooklyn, 169 N. Y. S. 412.

In Foley vs. Wesson Memorial Hospital the Supreme Court of Massachusetts exempted the hospital as a public charitable corporation. The plaintiffs were walking on the sidewalk when the hospital ambulance ran over the curbing and struck them. The ambulance belonged to the hospital and was operated by its employee at the time of the accident, in use on hospital business. It was admitted that the plaintiffs were careful and the employee was negligent. The Court held that the immunity of hospitals from the negligence of servants rests on the theory "that the funds of a hospital are devoted to a charitable trust and that to subject them to the payment for negligence of its servants would be an unlawful diversion of the trust." This non-liability in the opinion of the courts extends both to incompetent subordinates

§ 118. **Liability for Unauthorized Autopsies.** Before the body of a deceased human being is buried, there is a right vested in the husband or wife or next of kin to possession, for the purpose of burial or other legal disposition of it. In the case of Burney vs. Children's Hospital[12] the Court held that a father, upon the body of whose deceased minor child an autopsy had been performed without his consent, might maintain an action against the hospital.

The right to the possession of a dead body for the purposes of preservation and burial belongs, in the absence of any testamentary disposition, to the surviving husband or wife, or next of kin, and the right of the surviving wife (if living with her husband at the time of his death) is paramount to that of the next of kin.[13]

"This right is one which the law recognizes and will protect, and for any infraction of it—such as an unlawful mutilation of the remains—an action for damages will lie. In such the feelings and mental suffering resulting directly and proximately from the wrongful act may provide grounds for action, although no pecuniary damage is alleged or proven. . . . all courts now concur in holding that the right to a dead body for the purposes of decent burial belongs to those most intimately and closely connected with the deceased by domestic ties, and that this is a right which the law will recognize and protect."[13]

A surviving wife is entitled to the possession of the body of her deceased husband, in the same condition as when death occurred, for the purpose of giving it proper care and burial; and she may sue for damages one who unlawfully or wantonly mutilates the body before burial.[15]

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and subordinates selected with care. 1924, 141 N. E. 113. Mass.

[12] 1897, 169 Mass. 57, 61 Am. St. Rep. 273.

[13] 1891, Larson vs. Chase, 47 Minn. 307, 50 N. W. 238.

[14] 1891, Larson vs. Chase, 47 Minn. 307, 50 N. W. 238, 14 L. R. A. 85, 28 Am. St. Rep. 370.

[15] 1896, Foley vs. Phelps, 1 App. Div. 551, 37 N. Y. S. 471.

The facts in this case were that the plaintiff's husband fell through an elevator shaft in a building, was taken in an unconscious condition to the Bellevue Hospital, where he died three hours after his admission. When the plaintiff applied for the body—to remove it to her home, where it was to be prepared for burial—notwithstanding her requests and protestations, the defendant, without her knowledge or consent, procured, assisted, aided, and abetted in performing an autopsy on her husband's body, which autopsy was performed without any authority of law, and was wilfully done . . .

In the case of Medical College of Georgia vs. Rushing, the plaintiff in his petition alleged that his sick wife was received by the defendant for treatment in its hospital where the sick and injured were received for treatment, for compensation; that she died at said hospital; and that the defendant, without his knowledge or consent, mutilated and cut up the body "to gratify professional curiosity or some other unlawful purpose." The Court held that the petition stated a cause for action.[16]

The Court said: (a) "The right to the possession of the dead body of his wife for preservation and burial belongs to the husband. Any unlawful and unauthorized mutilation of the remains would be an invasion of this right, for which an action for damages would lie.

(b) "In such an action, damages will be allowed for mental suffering and injury to the feelings, although no actual pecuniary loss is alleged or proved.

"The Medical College of Georgia is not a public institution of the State because it is designated by law as a branch of the University of Georgia, and it is liable for the torts of its agents in the conduct of its business and within the scope of their authority. Therefore, where it conducts a hospital for the treatment of the sick, and injured for compensation, it is liable in damages for the unlawful and unauthorized mutilation of the remains of a patient who died at the hospital; and this would be true whether the college or the hospital was compensated for board, lodging, and treatment of such patient or not.

"Public eleemosynary institutions are liable for the torts of their agents, the same as private business corporations, if they have any property, or are in recipt of any income, not exclusively devoted to public charity, out of which a judgment against them can be satisfied. . . . where a hospital holds itself out for the treatment of the sick, whether this treatment is to be given as a gratuity, or is to be paid for, the implication arises that such treatment will be performed in a skilful manner, and such hospital or institution will be liable for unskilful or negligent treatment of the patient."[17]

16-17 1907, 1 Ga. App. 468, 57 S. E.. 1083.

In an action[18] by a mother against a hospital to recover damages because the hospital refused to deliver the body of her son, "the complaint stated that, immediately after the death of the son, the mother demanded his body, and sent an undertaker for it, but that the defendant refused to deliver it until after it had caused the coroner to send a physician to make an autopsy, to which plaintiff had refused her consent. Penal Law (Consol. Laws 1909, C. 40), § 2213, provides that the right to dissect the dead body of a human being exists whenever prescribed by special statutes, whenever a coroner is authorized by law to hold an inquest upon a body, whenever authorized by the husband, wife, or next of kin, and whenever any district attorney shall deem it necessary. Section 2214 makes the unauthorized dissection of the human body a misdemeanor, while Code Cr. Prac. § 773 makes it the duty of a coroner to inquire into all suspicious deaths. Consol. Act (Laws 1882, C. 410), § 1773, makes it the coroner's duty in case of a suspicious or unusual death to require a physician to view the body or perform an autopsy, and laws 1895, C. 846, § 1775, makes it the duty of any citizen who should become aware of the death of any person to report such death to a coroner. The Court held that "as an unauthorized autopsy is a misdemeanor, and since complaint stated nothing to show that the autopsy in this case was legal, it stated a cause of action."

A hospital has been held not liable for damages if it did not participate in the autopsy. In Hasselback vs. Mt. Sinai Hospital[19] the Court said: "Defendant hospital owed no absolute duty to deceased's wife to prevent his body from being dissected in the hospital by persons pursuing an independent calling and not in defendant's employ or acting under its direction or with its consent.

"Damages awarded for a dead body's mutilation are not given for the injury done the body as property, because there are no property rights, in the ordinary sense, in a dead body and . . . no obligation is imposed by law upon the defendant; except to refrain from actively participating, by its servants or otherwise, in the unlawful mutilation of the

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[18] 1911, Darcy vs. Presbyterian Hospital, 202 N. Y. 259, 95 N. E. 695.

[19] 1916, 173 App. Div. 89, 159 N. Y. S. 376.

body of a patient who dies within its walls, and from causing or procuring such mutilation to take place."[20]

§ 119. **Industrial Hospitals and Medical Service.** We have seen in a former chapter that differences of opinion have been expressed on the nature of hospitals conducted by employers and supported partly or wholly by contributions from the pay roll of employees. The weight of opinion is that such hospitals are charitable, but there are strongly argued opinions to the contrary. The question becomes important here because of its bearing on the liability of the employer. If such institutions are charitable, then the weight of opinion is that they are not liable to patients when the hospital attendants have been selected with due care.

In favor of the charitable character of industrial hospitals are the following cases:

Union Pacific R. Co. vs. Artist.[1] . . . "A master who sends his servant for treatment to a hospital maintained by the master for charitable purposes is not responsible for injuries caused to the servant by the negligence of the hospital attendants, where the master has exercised ordinary care in selecting such attendants. A hospital maintained by a railroad company for the free treatment of its employees, supported partly by the monthly contributions of all its employees and partly by the company, and not maintained for profit, is a charitable institution.

"One reason why corporations and individuals conducting hospitals supported by charitable endowments and contributions, and operated to heal the sick and injured, but not for profit, are not liable for the negligence of their employees, is, that the moneys in their hands constitute a trust fund devoted to a charitable purpose, and the courts refuse to permit it to be diverted to the very different purpose of paying for the malpractice of their physicians or the negligence of their attendants. Moreover, the corporations or

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20 1916, Same, 159 N. Y. S. 376.

1 1894, 60 Fed. Rep. 366.

The question is further complicated by the imposition of liability under state or national liability and workmen's compensation laws. What conclusions will emerge from the present confusion it is hard to discern. That the industrial hospital maintained to take care of a legal liability will not be considered a charitable institution, is reasonably certain. In other cases the existing conclusions may be maintained.

individuals that administer such trusts must, after all, leave the treatment of the patients to the superior knowledge and skill of the physician."[1]

"The test which determines whether such an enterprise is charitable or otherwise is its purpose. If its purpose is to make profit, it is not a charitable enterprise. If it is to heal the sick and relieve the suffering, without hope or purpose of getting gain from its operation, it is charitable. Tried by this test the hospitals and medical department of this company are a great public charity. They are supported by the voluntary contributions of this great corporation and of its employees, without purpose to profit thereby."[2]

"It is true he made his contribution to the fund to maintain this charitable enterprise, but he paid nothing further for his hospital accommodations or his treatment. He neither contributed nor paid any more than he would have contributed if he had never been treated at all. The company, as the trustee and administrator of this charity, offered him the hospital accommodations and the physicians in its employment, and he accepted them. From these facts no contract to treat him with ordinary skill and care can be implied, because, in all that it did in his behalf, this company was conducting a charitable enterprise. The company was not organized for the purpose of furnishing and operating hospitals and supplying medical attendance for gain, and such a business would be clearly beyond its powers. It was chartered to construct and operate a railroad and telegraph line. It was under no legal obligation to give thousands of dollars per annum to furnish hospitals and physicians for its employees, and its appropriation of this money to this purpose was a gift—a charity. If it be urged that this gift may have been prompted by an ulterior and selfish motive, . . . the answer is that the true test of a public charity is not the motive of the donor, but the purpose to which the money given is to be applied."[2]

A railroad hospital organization was organized as a corporation independent of defendant railroad; its directors being certain officers of the railroad. All employees of the railroad were, as such, members thereof, supporting the hos-

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2 1894, Same, 60 Fed. Rep. 366.

pital by monthly contributions. No profit was derived by the railroad company from the conduct or operation of the hospital. The physicians, surgeons, and nurses in charge were selected by directors and officers.[3]

"Although it may be true that the railroad company derives no personal or pecuniary benefit or gain from the conduct and operation of the hospital, yet it manages and controls it, and exacts from its employees sufficient funds to defray at least in part the expenses incurred in its operation. The employees thus contributing have the right to demand admission when injured in the service of the railroad company; but they have no voice in the selection of physicians, surgeons, or other attendants in charge of the hospital. All of these persons are appointed by the railroad company; and, although the railroad company is not liable in damages for the negligence and carelessness or unskilfulness of any of its surgeons, physicians, or attendants in charge in their treatment and care of the employees received into the hospital, yet it is obliged to exercise reasonable care in the selection of persons who have charge of the patients; and, if it fails to select skilful and competent surgeons, physicians, and attendants, it may be required to respond in damages to any employee who has been injured by such incompetent or unskilled physicians, surgeons, or attendants. When the railroad company employs competent and skilful people, the measure of its duty to its employees is discharged. If these persons should be guilty of malpractice or other acts of negligence, the party injured by reason thereof must look to the individual causing the injury, and not to the railroad company."[3]

The physician or surgeon employed by a railroad company to attend employees injured in its service is not a servant of the company so as to render it liable for his carelessness or negligence in rendering professional services. For the relation of master and servant to exist, so as to make the master liable, he must not only have the power to select and discharge the servant, but to direct the mode of executing, and to so control him in his acts in the course of his employ-

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[3] 1907, Illinois Central R. Co. vs. Buchanan, 126 Ky. 288, 103 S. W. 272.

[4] 1907, Same, 126 Ky. 288, 103 S. W. 207.

ment as to prevent injury to others. A railroad company employing a physician or surgeon of ordinary competency and skill to care for employees injured in its service is not liable for his carelessness, negligence, or malpractice in the performance of his professional duties toward an injured employee placed in his charge by the company.[5]

Charitable associations conducting hospitals are not liable for the negligence of their physicians and attendants, resulting in injury to patients, unless it is shown that the association maintaining the hospital has not exercised reasonable care in the employment of its physicians and attendants.[6]

The foregoing rule is applied in an action by the father of a deceased employee of a railroad company against a hospital association for the neglect of its physicians and attendants in failing to give the son suitable care and attention, where it appears that the defendant is an association maintained by the railroad company for the treatment of its employees while sick, and is supported by the monthly contributions of all its employees who, so long as they remain in the service of the railroad company, and contribute to the fund, are entitled to the benefits of the hospital free of charge. In such an action, a petition which fails to allege that the defendant did not exercise reasonable care in the selection of its physicians and attendants is subject to demurrer.[6]

"All contributors to the fund by which the association is maintained are entitled, so long as they remain in the employ of the railroad company, to the benefits of the hospital. They may, in case of accident, sickness, or disease of any kind, be taken to the hospital, where they are given, free of all expense, such medical or surgical care and attention as may be necessary. The institution is maintained for the mutual benefit of the contributors to the fund, and in no sense is it maintained for profit."[6]

A railroad company is not liable for any negligence of its surgeons, employed by it to treat gratuitously its injured employees, in causing an injured employee to be moved from

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5 1895, Quinn vs. Railroad, 94 Tenn. 713, 45 Am. St. Rep. 767.

6 1916, Nicholson vs. Hospital Assn., 97 Kans. 480, 155 Pac. 920.

7 1916, Nicholson vs. Atchison, Topeka and Santa Fe Hospital Assoc., 97 Kans. 480, 155 Pac. 920.

8 Same, 97 Kans. 480, 155 Pac. 920.

one place to another, where it was not negligence to employ him.[9]

When $10 a month was withheld from the wages of an employee by a company which pays such money to a physician selected by the company to attend injured employees, and no profit is derived from the employment of such physician by the company, the company is under the implied duty of selecting a competent physician, and when it has done this, the duty is discharged.[10]

The Supreme Court of Missouri in 1908 made a ruling[11] contrary to the above cases in Phillips vs. St. L. & S. F. R. Co. The Employees' Hospital Association of the Frisco Line, a corporation under the direct control of the St. Louis and San Francisco Railway Company, which undertakes to furnish medical treatment to employees of the railroad in consideration of monthly payments made by them, was held by the Court not to be a "charitable institution," within the rule which exempts such institution from liability for negligence. When a hospital association operated under the direction of a railroad company undertakes to furnish treatment to employees, not as a charity, but in consideration of monthly payments by such employees, it is liable for failure to treat completely the patients received.

Where the surgeon of a railroad company's hospital having charge of an insane patient, place him aboard a train unattended and without notice to his family, knowing that he would have to find his home in a populous city filled with street railway lines, his death by being run over by a street car might have been reasonably anticipated.[12]

Likewise in the case of Arkansas Midland R. Co. vs. Pearson[13] it was held that the institution was not a charitable one but was exempt on the trust fund theory. "A physician cannot be regarded as an agent or a servant in the usual sense of the term," said the Court, "since he is not and necessarily cannot be directed in the diagnosing of diseases and injuries and prescribing treatment therefor; his office being to exercise his best skill and judgment in such matters, with-

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9 1896, York vs. Chicago, etc., R. Co., 98 Iowa 553.

10 1910, Wells vs. Ferry, 57 Wash. 658, 107 Pac. 869.

11-12 1908, 211 Mo. 419, 111 S. W. 109.

13 97 Ark. 399, 135 S. W. 917.

out control from those by whom he is called or his fees are paid.[14]

"There was no allegation that such hospital department was conducted for gain or profit to the company, and no proof showing that any such gain or profit resulted to it because of . . . deductions from the wages of the employees over and above the maintenance and support of said hospital department, and the company denied any understanding or agreement on its part to furnish proper medical attention for the deductions made.[14]

"It could not be said to be conducted as a charity, for only those employees who had contributed the fees deducted from their wages for its maintenance were entitled to enter there for treatment, and all the physicians and employees required to maintain and operate it were paid from such fund. Nor can it be said to have been administered by the railroad company out of pure philanthropy, since it may have had some benefit therefrom in decrease of amount of damages for injuries caused in the operation of the road, and the better and more efficient service to the company of its employees because of its maintenance. It is also true that none of the employees are required to accept the treatment provided at said hospital, and cannot do so unless before their service with the railroad company is ended, thus while in effect creating a fund for the benefit of themselves, it may be and is certainly for others; for how few of all those contributing thereto received any personal benefit therefrom, and how small a part of the expense of caring for an injured employee was actually paid by him to provide hospital accommodations and medical skill and attention to relieve pain and suffering and restore health without any hope of any other profit or gain upon the part of the company . . ., other than to administer it for the support and maintenance of said hospital department. . . . It was not contemplated by such employees in their contribution to this fund that it should be used in payment of damages for the negligence or malpractice of physicians employed . . . and certainly the railroad company that assumed gratuitously to collect and preserve such fund and provide hospital accommodations and

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[14] Same, 97 Ark. 399, 135 S. W. 917, 920.

competent physicians and surgeons to operate it, . . . should not be required to pay damages for such negligence or malpractice; it being no part of its business under its charter to maintain a hospital. At most it can only be considered a trustee for the proper administration and expenditure of such fund, and should be held only to ordinary care in the selection of competent and skilful physicians to administer relief and attention to sick and injured employees."[15]

In an action for damages sustained by reason of defendant's alleged wrongful action in prematurely discharging the plaintiff from a hospital where it had contracted to treat him for his injuries, an instruction that the jury should allow such an amount as would compensate him for the time lost by the injury, such amount as would be a reasonable sum for medical attention and treatment, and also such an amount as would compensate him for his mental and physical suffering caused by want of proper care and medical attention, was objectionable as allowing a recovery for all the time lost on account of injuries, when the suit was not for the original injury, but only for damages directly caused by the wrongful discharge from the hospital.[16]

Where a master, at the time his employee receives a severe bodily injury, calls his own regular physician and surgeon over the telephone and instructs him "to come and take care of the injured man," and at the time of such giving well knows that the injuries of his employee are of such character as to render it necessary to remove him immediately to a hospital, and the doctor at once responds and takes the man to a hospital, and for the purpose of inducing the hospital authorities to receive him, states to them that the principal for whom he is acting will be responsible for the payment of the hospital bill of the injured man, the master is bound by such acts and declarations on the part of his agent.[17]

And where subsequently, and while the patient was yet incapable of being removed or discharged from the hospital without great danger to his life or health, the master gave notice that thereafter he would not be responsible for the care and treatment "from now on," it was held that the master

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15 Arkansas Midland R. Co. vs. Pearson, 97 Ark. 399, 135 S. W. 917.

16 1904, International & G. N. R. Co. vs. Logan, 36 Tex. Co. A. 279, 81 S. W. 812.

had no right thus to terminate his liability to the hospital by removing the patient or when he could not be dismissed by the hospital without serious danger to his life or health, or by showing that the injured man had means out of which the hospital could and should have collected its pay.[17]

A general hospital was open to any person suffering from injury. If able to pay, the patient was required to pay a specified sum per day, but there was no hospital charge for physicians who rendered their services gratuitously. The superintendent acted for the hospital authorities in summoning physicians, without assuming to act for anyone else. The claim agent of a railroad company had requested the superintendent to notify the company's physician on the admission of any employee of the company to the hospital. An employee was injured and admitted to the hospital. The superintendent unable to find the company's physician, called a physician whose services at the hospital were to commence two days later. The physician treated the employee and the company paid the hospital charge for the employee. The Court held that this did not establish any contract between the company and the hospital sufficient to authorize the physician to recover from the company for the services rendered to the employee. It was further said that an employer is not required to provide, even in cases of emergency, medical attendance for his employee, unless he has agreed to do so, and the fact that an employer admits his liability for injuries to an employee by settling with him therefor, does not inure to the benefit of the physician treating the employee for such injuries.[18]

Ellen Taylor, the wife of an employee, sued the company and the company doctor for damages for injuries suffered by her because of the refusal of the physician to attend her under a contract between the company and the employee by which medical services were to be furnished to him and his family. The company deducted 75 cents per month from the wages of single employees, and $1.00 each from the wages of married employees, agreeing in the case of a married man to render medical services to himself and family. Such deduction was

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[17] 1914, Omaha General Hospital vs. Strehlow, 96 Neb. 308, 147 N. W. 846.

[18] 1909, Vorhees vs. N. Y. C. & H. R. R. Co., 114 N. Y. S. 242, 129 App. Div. 780. 1910, Judgment affirmed, 198 N. Y. 558, 72 N. E. 1105.

made from Taylor's wages on February 9, 1914, of which 90 cents was paid to the company doctor, and 10 cents was retained by the company. Mrs. Taylor was taken ill on March 5, and on that day and the 6th and 7th, according to testimony produced, repeated requests were made that the doctor should visit her at her home about fifty yards from his office. He failed to do this, but sent certain medicine, which from the nature of the illness as it developed, was useless. On the evening of the 7th, Mr. Taylor called in another physician. Mrs. Taylor was suffering from an abscess, which burst before the 10th, on which day the company's physician, after having some conversation with her father, called on her. She had then so far recovered, however, as not to need treatment. After the other physician had been called in, the company doctor gave that fact as his reason for not complying with a request of the sister of the sick woman that he visit her. The Court sustained the judgment on the jury's verdict, awarding Mrs. Taylor $300 damages.[19]

In an action against a railroad company for injuries from unskilful treatment of an employee by defendant's surgeon, for injuries received by the employee after he had finished his work and was going home, the evidence was held to require submission to the jury of the issue as to whether, by the contract of employment and retention of a part of the employee's salary for a "hospital fund," the company contracted to treat employees for all injuries, or only those received in the course of their employment.[20]

A railroad company retained a part of the salaries of its employees for a hospital fund, and never informed its employees that it would treat them only for injuries received in the course of their employment. In a suit brought by an employee for malpractice of the company's surgeon, it was held that the railroad company was estopped to claim that it was required to treat only for injuries in the course of employment, and was treating plaintiff as a charity. . . . A corporation which contracts, for a consideration, to treat its employees for any injury they may receive while in its

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19 1917, Sloss—Sheffield Steel & Iron Co. vs. Taylor, 16 Ala. App. 241, 77 So. 79.

20 1917, Same, Sloss—Sheffield Steel & Iron Co. vs. Taylor, 16 Ala. App. 241, 77 So. 79. Also Gawdey vs. Spokane Falls & N. Ry. Co., 30 Wash. 349, 70 Pac. 972, 94 Ann. St. Rep. 880.

employ, is liable for the malpractice of a surgeon employed by it."

The question arises here as to the liability for payment for hospital services rendered an employer for an injured employee discharged before he is cured or able to return home.[1] The defendant in this situation took one of its employees who had been seriously injured, to plaintiff hospital, and at its request, and upon its promise to pay for his care and treatment, the plaintiff accepted and received him as a patient for an indefinite period, no length of time being mentioned. Subsequently, and while the patient was yet incapable of being moved or discharged from the hospital without great danger to his life or health, the defendant gave notice that thereafter it would not be responsible for his care or treatment. The Court held that the defendant had no right to thus terminate its liability; that, under the circumstances, it was an implied condition of the contract which defendant could terminate only by removing the patient, or when he could be dismissed by the plaintiff without serious danger to his life or health. In order to relieve itself from liability for care and treatment, furnished after the notice, on the ground that the patient had means of his own to pay for it, the burden was on the defendant to prove that he had means out of which the plaintiff could and should have collected its pay.[2]

§ 120. **Injuries to Passengers on Carriers.** A railroad company having assumed to furnish a surgeon for passengers injured thereby, its duty to the plaintiff is discharged when it provides a surgeon possessing only ordinary skill; and for any damage caused the plaintiff by negligence of such surgeon, the surgeon, and not the defendant, would be responsible.[3] " . . . the company would not be liable, because it had performed all the duty that is incumbent upon it when it selected a proper and competent man, and held him out for these parties to employ if they saw fit."

If the surgeon of a foreign steamship, bringing immigrants to a port of this country where the quarantine regula-

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[1] 1908, Phillips vs. St. L. & S. F. R. Co., 211 Mo. 419, 111 S. W. 109.

[2] 1897, St. Barnabas Hospital vs. Minneapolis International Electric Co., 68 Minn. 254, 70 N. W. 1126.

[3] 1883, Secord vs. St. Paul R. R. Co., 18 Fed. Rep. 221.

tions require vaccination as a prerequisite to landing, vaccinates one of them whose behavior indicates consent on her part, whatever her unexpressed feelings may be, he is justified in his act, and the ship-owner is not liable therefor as an assault.[4]

A ship-owner who provides a competent surgeon, whom the passengers may employ, if they choose, is not liable for his negligence in the medical treatment of a passenger, either at common law or by the U. S. St. of August 2, 1882, § 5, which requires every vessel transporting immigrant passengers to carry a surgeon or medical practitioner "who shall be rated as such in the ship's articles and who shall be provided with surgical instruments, medical comforts, and medicines," and makes the master of the vessel liable to a penalty for its violation.[5]

As to whether, in the absence of a statutory requirement, a steamship company owes a duty to its passengers to provide a surgeon to care for them in case of sickness or accident, or as to whether having voluntarily assumed that duty, its position becomes identical with that of a carrier upon whom the duty is imposed by law:[6]

Where by law or by choice the company has become bound to furnish such an officer, reasonable care and diligence in the selection of a person reasonably competent is all that is required, and it is liable only for a neglect of that duty. It is not compelled to select and employ the highest skill and largest experience. It was accordingly held, that in the absence of evidence of any carelessness or negligence on the part of the steamship company in its selection of a surgeon for one of its steamships, it was not liable for the negligence of the surgeon.[7]

By the statute of Great Britain, known as the "Passengers' Act, 1855," every passenger ship is required to carry a duly qualified medical practitioner, and its owner or charterer is required to provide for the use of its passengers a supply of proper and necessary medicines for their medical treatment during the voyage, properly packed and placed under the

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4 1891, O'Brien vs. Cunard Steamship Co., 154 Mass. 272.

5 1891, Same, 154 Mass. 272.

6 1887, Laubheun vs. DeKoninglyk Nederlandsche Stoomboot Maatschappy, 107 N. Y. 227.

7 Same, 1887, 107 N. Y. 227.

charge of a medical practitioner "to be used at his discretion." In an action to recover damages against a corporation of Great Britain for injuries alleged to have been sustained by plaintiff, a passenger on one of its steamships, alleged to have resulted from taking calomel furnished by the steamer's physician in response to a request for "quinine," it appeared that defendant issued a prospectus to advertise its line, which contained a statement that an experienced surgeon was carried on board each ship and that all medicines were supplied gratis. The Court held that the defendant assumed no duty or liability beyond those imposed by the statute, i. e., to employ a duly qualified physician, to provide a supply of suitable and necessary medicines, properly packed and labeled, and to provide a proper place in which to keep them; and that, having complied with these requirements, for errors and mistakes on the part of the physician thereafter, it was not responsible. . . . evidence of confusion and disorder as the steamer went to sea and after the medicines were put in charge of the physician, did not justify a finding of negligence on the part of the defendant.[8]

§ 121. **Liability of Profit Making Institutions.** While a private charitable institution which has exercised due care

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[8] 1892, Allan vs. State Steamship Co., 132 N. Y. 91, 28 Am. St. Rep. 556.

The objects of a corporation being benevolent and charitable, it must be held to be a valid public charity.

The employe of a corporation which was a valid public charity was not within the provisions of the Workmen's Compensation Act. (St. 1911, C. 751, and acts in amendment). Though part 1, § 2, provides that sec. 1 shall not apply to actions to recover damages for personal injuries sustained by domestic servants and farm laborers; it is not following that all other employees injured in their employment are within the terms of the act, and in the absence of plain intention on the part of the Legislature, a charitable institution is not liable for personal injuries due to the negligence of its servants or agents. Where the danger in operating a buzz planer without a guard was obvious and could be seen by reasonable observation on the part of the servant injured, he could not recover from his employer either under the Employers' Liability Act. (Rev. Laws, C. 106, § 71, et seq.) or at common law, having assumed the risk, though he was unable to speak or understand English, and was inexperienced; he being a carpenter and of average intelligence. P. 687, "It is clear that any instructions or warning of the danger would not have informed him of anything which was not plainly to be seen; he was a carpenter, and there is nothing in the record to show that he was not a man of average intelligence."

1918, Zoulalian vs. New England Sanitarium & Benevolent Assn., 230 Mass. 102, 119 N. E. 686.

in the selection of its employees is not liable for injuries resulting from their negligence, the rule is otherwise as to the proprietor of a hospital run for profit.

A private hospital for profit, received a patient for treatment who was old and feeble. He was placed in a second story room, from which in case of fire, he could not make his escape without assistance. Notwithstanding the building was made of wood and heated by a furnace in the basement, defendant allowed the fireman and watchman to depart for the night, with nobody on duty to protect the premises from fire. The premises burned, and the patient was burned to death. It was held that defendant was guilty of negligence.[9]

In the following case,[10] the employer had an arrangement with certain physicians, who operated a hospital in Cloquet, by which he deducted a certain sum each month from the pay of each employee and turned over the sums so deducted to defendants, who agreed for such compensation to care for and treat all injured employees which the employer should send to them. The plaintiff was injured, and was taken to this hospital and treated by the physicians under this arrangement. It was held that the relation of patient and physician existed between the plaintiff and defendants, and that the latter owed the plaintiff the duty to exercise ordinary care and skill in treating him.

A patient is generally admitted to a hospital, conducted for private gain, under an implied obligation that he shall receive such reasonable care and attention for his safety as

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9 1914, Green vs. Biggs, 167 N. C. 417, 83 S. E. 553.

An interesting side light is shown in this case. The complaint alleged that the patient was an invalid unable to tend to his personal wants, that he was placed in an upstairs room, from which he was unable to escape when the building burned. Upon the trial, plaintiff was allowed to prove the age and the expectancy of life for the patient; that he was of good habits; that before he came for treatment his health was as good as that of the average, and that his earning capacity exceeded his expenditures. The defendant did not object to such evidence as a variance, but himself introduced the complaint, alleging that deceased was helpless, taking the position that plaintiff could not allege negligence based on the helplessness of the patient and demand large damages for his death on the ground that he was in good health. The Court held that, defendant having adopted one theory, he cannot thereafter complain that the evidence was received and submitted to the jury.

10 1916, Vitta vs. Fleming, 132 Minn. 128, 133, 155 N. W. 1077.

his mental and physical condition, if known, may require. The question of negligence is said to be one for the jury.[11]

A hospital, incorporated and conducted for private gain, has been held liable in damages to patients for the negligence of nurses and other employees. The general principle that a master is responsible for the torts of a servant in the scope of his employment was held to apply to hospitals incorporated and conducted for private gain.[12]

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11 A hospital conducted for private gain is liable for injuries resulting from the negligence of its employees. "The business of such a hospital carries with it the implied obligation to give the patients therein reasonable care and attention." A child of eight who had an attack of appendicitis was taken to the hospital for care and was there operated upon. Shortly after the operation when there was no attendant in the ward, she fell off the bed on which she was lying and soon, thereafter, died. The Court adds that the liability of the appellee is a question for the jury to decide. 1922, Maxie vs. Laurel General Hospital, 130 Miss. 246, 93 So. 817.

In an action against a private hospital by a patient for damages because of pneumonia, alleged to have been caused by a leaking roof, the evidence was held to sustain a finding that defendant was negligent. The patient was placed under the care of a pupil nurse, who permitted her to lie on a wet bed for more than two hours. 1918, Tulsa Hospital Association vs. Juby, 71 Okla. 105, 175 Pac. 519.

12 The Court declared that the "duties which a hospital as such owes to a patient cannot be evaded by proof that the hospital nurse obeyed the instructions of the physician employed by him. Nurses necessarily have charge of delirious patients during the absence of physicians, while the responsibility of the hospital continues . . . Under the circumstances self injury may well have been foreseen. The patient was left near a movable, unfastened, unprotected window sash in a room three stories above the pavement. He, in fact committed an irrational act resulting in his death. It cannot be said as a matter of law that there was no proof of negligence on her part as on the part of her employer." 1914, Wetzel vs. Omaha Maternity and General Hospital Association, 96 Nebr. 636, 148 N. W. 582.

The dissenting opinion of Judge Sedgwick in this case is a clear presentation of types of hospitals in relation to liability. "There is no doubt," he said, "that hospitals conducted for gain ought to be held to a very high degree of diligence in guarding the safety of helpless patients confided to their care. They should be compelled to respond in damages for any injury caused by the negligence of the employees under their control. With the advance in medical science and skill, the necessity for special equipment and convenience for caring for the sick become more apparent . . . For the purpose of this discussion we may consider that there are three general classes of hospitals: First, hospitals established as a pure charity caring for the unfortunate without charge; second, private hospitals for gain, which furnish accommodations, appliances, and medical treatment; third, those that furnish rooms and appliances for physicians who take their patients there, select the rooms appropriate to the conditions of their patients, employ nurses and instruct them as to the care needed, and treat their patients there professionally. The responsibility of a hospital of the second class, the patients' rooms, care and professional treatment all being furnished by the same authority, is well defined in the law. . . . Such hospitals

It is the duty of the owner of a sanitarium conducted for private gain to use reasonable care and diligence, not only in treating, but in safeguarding a patient, measured by the capacity of the patient to provide for his own safety, and to discharge such duty. Physicians and nurses who possess a reasonable degree of learning and skill, ordinarily possessed by persons similarly engaged, must be employed, and they must act with reasonable care and diligence.[13]

Where damages are awarded they must be in proportion

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receive their patients under an implied obligation that they shall receive such reasonable care and attention for safety as the mental and physical condition, if known, may require. "The mistake of the majority opinion, as it seems to me, is in treating the case at bar as one of that class. The responsibility of a hospital of the third class is more analagous to the liability of a hotel than to the liability incurred by a hospital which assumes the entire care and treatment of a patient. Such Hospital is responsible for what it undertakes, as is a hotel. Negligence of employees under its control in performing the duties of a hospital is negligence of the hospital. But the physician is independent of the hospital, and it is not responsible for his negligence, nor for the negligence of those who are under his control and act in accordance with his instructions. A patient should have a room and care suited to his condition . . . Such matters are determined by the attending physician who knows the patient's condition, and who may be mistaken but is the only person at all qualified to judge what treatment and care of the patient will be most likely to succeed . . . When the physician ordered the confining straps removed, he best knew the patient's condition, and he judged that such removal was necessary in view of that condition. (The evidence is that the development of hypostatic pneumonia in a patient suffering from typhoid fever is a very dangerous complication; that because of accumulations in the lungs it is absolutely necessary that the position of the patient should be frequently changed; and that if he was allowed to remain continually in the same position, the result would undoubtedly be fatal.) The evidence establishes that the probability that the patient in the condition he then was, would do violence to himself, was very remote. The nurse might confidently rely upon the judgment of the physician. The physician knew that the patient was receiving what was commonly known as general care, and that he was not being continuously attended by a special nurse. If such special attention was necessary, it was for the physician to ascertain that fact and to give directions accordingly. In the absence of such directions from the physician, the nurse was fully justified in continuing as she had been doing with the knowledge and approval of the physician."

13 Action was brought against a hospital and its proprietor for the death of a patient who jumped out of a window under the influence of alcoholic delusions. The question of whether the physician or the nurse should not, in the exercise of the requisite skill and care, have foreseen the casulty and protected the patient from the unguarded window in the bathroom, was one for the jury to decide 1917, Robertson vs. Charles B. Towns Hospital, 165 N. Y. S. 17.

to the pain and injury suffered, and not so excessive as to indicate prejudice on the part of the jury.[14]

Institutions for gain have been held liable for the failure to properly safeguard and restrain insane or delirious patients.[15]

Where proper safeguards have been taken the hospital is not liable for a breach of its contractual duty in the care to be taken of a patient's property. In the following situation action was brought against a private hospital for loss of a ring while undergoing an operation. The evidence showed that the ring was forcibly removed from plaintiff's hand by a particular operating nurse.

"If an operating room nurse in a private hospital," said the Court, "stole a ring from a patient under the influence of ether, the hospital was not liable on the ground that in stealing the ring the nurse was acting within the scope of her employment. . . . Where a private hospital contracted to give plaintiff a room before and after her operation, to give her family physician the use of the operating room, and to give her the services of nurses necessary for her care before, after, and during the operation, the hospital's liability for theft of a ring from plaintiff's hand by an operating nurse while plaintiff was under the influence of ether did not depend on plaintiff's proving that the hospital was negligent.[16]

"If a stranger burst into the operating room of a private hospital, attacked plaintiff, who had engaged a room and nursing attendants there for her operation, and had done plaintiff bodily harm, or had attacked plaintiff while the

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14 The appellant, a corporation, organized under the general Illinois law relating to corporations for profit, operated a general hospital in the City of Chicago. A minor operation was performed, under ether, and the patient while unconscious, was placed in bed by attendants. In conformity with usual practice in such cases, the bed had been heated by placing in it three hot-water bottles. The attendant removed two but carelessly left the third. On recovering consciousness three hours later the patient found his foot burned which resulted in a protracted stay in the hospital and, it was claimed, permanent injuries. The jury gave a verdict of $10,000 upon which trial court required a remittur of $2,500, and entered judgment for $7,500. 1910, Appell vs. Ravenswood Hospital, 167 Ill. App. 87.

15 1907, University of Louisville vs. Hammock, 127 Ky. 564, 106 S. W. 219; also, 1914, Wetzel vs. Omaha Maternity Hospital Association, 96 Nebr. 636, 148 N. W. 582.

16 1917, Vannah vs. Hart Private Hospital, 228 Mass. 132, 117 N. E. 328.

nurses were carrying her from the operating room to her own room, and the hospital's nurses had stood by and had done nothing to protect plaintiff, the hospital would have violated its duty owed to plaintiff under its contract with her.

"When plaintiff for her operation engaged accommodations at a private hospital, also contracting for nursing before, during, and after her operation, and one of the operating nurses stole a ring from plaintiff's hand while plaintiff was under the influence of ether, there was a violation by the hospital of its duty toward plaintiff under its contract with her.

"Where defendant servant in course of employment by act which constitutes breach of contractual duty of defendant to plaintiff, injures plaintiff, plaintiff can sue for breach of contractual duty or for servant's injurious act in course of employment, but if the servant's act, through a breach of defendant's contractual duty to plaintiff is not in the course of the servant's employment, plaintiff can sue only for breach of defendant's contractual duty.

"Where a patient, when she came to a private hospital, was asked to leave all her valuables in the hospital's custody, and she retained rings on her fingers, one of which was stolen while she was under the influence of ether, the hospital was not liable."[17]

A patient in a private sanitarium was paying for the services he received and did not receive reasonably kind treatment so far as the nature of his malady would allow. Apparently, he was assaulted more than was necessary to control him at times when he was insane or delirious, and the Court held that $100 damages were not excessive.[18]

What constitutes negligence was decided in Croupp vs. Garfield Park Sanitarium[19] as follows: "We think that the jury might properly find that the act of the servants of defendant in placing plaintiff on a bed-pan after giving him an

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[17] 1917, Vannah vs. Hart Private Hospital, 228 Mass. 132, 177 N. E. 328.

[18] 1902, Galesburg Sanitarium vs. Jacobson, 103 Ill. App. 26.

[19] 1909, 147 Ill. App. 7.

"The defendant conducted a private sanitarium or hospital for pecuniary profit, and received plaintiff who was then ill and helpless, as a patient therein at the price of $15 per week. Under such facts and circumstances the defendant owed plaintiff the duty to use reasonable care for his safety and reasonable skill in nursing and caring for him."

enema, and then, after his bowels began to move, leaving him alone in the room for five minutes, was, under the circumstances, and in view of his helpless condition, negligence of such servants under such circumstances as made such negligence the negligence of the defendant.

"Whether the jury might properly find that such negligence was the proximate cause of the fire by which plaintiff was injured, depends on the question whether a fire in the bed or room in which plaintiff was, was within the range of consequences reasonably to be expected from such negligent act. It is not sufficient that an injury of an entirely different character from that sustained might reasonably be expected from such negligent act. To render such act the proximate cause of plaintiff's injuries . . . damages by fire must have been within the consequences of the act reasonably to be expected. We do not think that ignition of a match and setting on fire of the bandages on plaintiff's legs thereby was within the range of consequences reasonably to be expected in the light of attending circumstances from leaving plaintiff alone, and, therefore, think that the jury could not properly infer that such act was the proximate cause of plaintiff's injuries."

A person who conducts a hospital for pecuniary profit owes to a patient received the duty to use reasonable care for his safety and reasonable skill and diligence in nursing him. The Court held that the jury might reasonably find that under certain circumstances it was negligence for the nurses of a hospital to leave a patient unattended for a period of five minutes.

For the negligence of a nurse in applying a hot-water bottle a hospital has been held liable.[20]

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[20] The defendant was a physician and surgeon operating a hospital for profit in connection with his practice, with one trained nurse and two assistant nurses in his employ. The plaintiff engaged the defendant in his professional capacity to treat, operate upon him, and have him cared for until he regained health, all for hire. The patient was operated upon successfully for appendicitis, and while under an anesthetic was placed in a bed prepared for him and heated to reduce the shock from operation. Some hours later the patient complained that his back was hurting him and the nurse took a leaking hot water bottle from under him. Examination showed a large area of back, shoulders, and hips burned. Damages were awarded. 1912, Fawcett vs. Ryden, 135 N. W. 800, 803. N. D.

"As the testimony stood at the close of plaintiff's case, reasonable men might conclude that it was negligence to leave the same (hot-water bottle) in such a position in the bed that it could come in contact with the insensible patient to his injury.

"There is no question under the pleadings or proof but that plaintiff was a patient for hire in this hospital of the defendant. The hospital was the defendant's private institution operated for his benefit in connection with his practice. It was not a charitable institution. . . . If defendant personally placed the plaintiff in contact with the hot-water bottle or in such near proximity thereto that plaintiff came in contact therewith to the injury complained of, no question of master and servant is involved, and defendant is responsible for his own negligent act, if such act be negligence, and the jury found that it was. If, on the other hand, the negligence was that of the nurse who prepared the bed, the authorities then held defendant liable."

Due care was discussed in Stanley vs. Schumpert,[1] where the Court decreed that the attendant of the sanitarium was not sufficiently careful, and did not follow the prescription. The injury, if any, was very slight. There was pain caused to the patient and nominal damages were allowed. The Court said: "An attendant in a sanitarium should be careful, and it is the duty of those in charge to compel the nurse to be careful, and not neglect the patient who is under the care of the sanitarium, and to whom it must see, to some extent at least, that medicines are properly administered."

A physician who does not manage or control the hospital is not liable for the negligence of hospital nurses or interns, if he had no connection with any negligent act although he

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1 "The functions of the nurse are sufficiently important to render her and her employers liable in damages for inflicting pain negligently. This nurse was employed by the sanitarium and had charge of plaintiff's case in accordance with his contract of employment. She was acting for the sanitarium under the direction of plaintiff's physician. Her duty was to carry out the orders of this physician, and it was the duty of the sanitarium to see that she carried out the orders devolving upon her as a nurse.

"The physician could have had another nurse called in her place, but he had no right to discharge her. The management of the sanitarium had the right of control and discharge. We think that the plaintiff should recover something for the intense suffering, though momentary, which the negligent mistake occasioned." 1906, Stanley vs. Schumpert, 117 La. 255, 41 So. 565.

has treated the patient. Whether a hospital was negligent in allowing a patient while suffering from a fitful, mental disorder, access to a sink-room, in the night, without an attendant, where poison was kept, is said to be a question for the jury.[2]

Responsibility for negligence in performing an operation was discussed in Walker Hospital vs. Pulley.[3]

"In our opinion," the Court said, "jurors of ordinary intelligence, sense, and judgment, although not skilled in medical science, are capable of reaching a conclusion without the aid of expert testimony as to whether it is good surgery to permit a wound to heal superficially, with nearly a half a yard of gauze deeply imbedded in the flesh, and likewise are capable of determining whether or not injurious consequences of some character would probably result."[4]

The proprietor of a hospital or sanitarium is bound to give a patient reasonable care and attention, and to have knowledge of the necessities of the case which would result from the care and attention and from the possession of ordinary skill in his treatment. Although he does not contract for the services of a special nurse, he is bound to see that

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2 "At night, during the absence of the patient's physician, it was clearly the duty of the hospital intern, who was a physician, and the nurse in charge to give such treatment and attention as the emergency demanded, when known. Defendant was prepared for such an exigency. One of the purposes of a hospital in assuming control of a patient, for private gain, is to furnish promptly modern equipment, facilities, and treatment. To avail himself of these advantages the patient left his farm in Saline County and intrusted himself to the care of the defendant. The duties which such a hospital owes to a patient are commensurate with the responsibilities assumed." 1914, Broz vs. Omaha Maternity Hospital, 96 Neb. 648, 148 N. W. 575.

3 The surgeons left a piece of gauze in a sinus and skiograms of plaintiff's teeth were made for the purpose of determining whether or not the plaintiff had septicemia. The testimony as to plaintiff's physical condition as evidenced by her ability to work before and after the surgical operation, and the piece of gauze taken from the sinus was held properly admitted in evidence, and the evidence was held sufficient to sustain a finding of negligence. 1920, Walker Hospital vs. Pulley, 74 Ind. App. 659, 127 N. E. 559.

4 Under a contract of the hospital with the patient, the corporation owes a duty of protection, which it violates by use of any instrumentality producing painful burns, so that the proof of such accident carries with it the presumption of negligence, and the doctrine res ipso loquitur applies, regardless of whether the injury was caused by carelessness of competent nurses or negligence in selecting incompetent nurses. 1916, Meyer vs. Hospital, 173 Cal. 156, 159 Pac. 436.

the patient has such attention as his condition apparently makes necessary, and is liable for damages if his failure to perform this duty results in injury to the patient.[5] "The keeper of the hospital is liable for damages if he fails to perform some duty which he owes the patient, and the patient is injured as a result of his failure. The extent and character of this duty depends on the circumstances of each particular case."

In an action for damages for the negligence of a hospital in allowing a delirious patient to wander and hurt himself, it was proper to allow practicing physicians, who qualified as experts, to testify as to the character of attention a patient should receive in a hospital. Whether a patient in a hospital, supposed to be dying, was delirious when he wandered and fell to the ground, or whether he did fall, and whether the hospital was negligent in not keeping closer watch over him, and whether such fall was the cause of his death, were held to be questions for the jury.[6]

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[5] The father brought suit against the proprietors of a sanitarium, who had received his son as a patient, alleging his death to be due to their negligence in not having someone to watch him. In consequence of this, the son walked out of an upstairs door, fell over the banisters and received injuries from which he died. The evidence was held to make the defendant's due care of patient while in extremis a question for the jury. 1916, Durfee vs. Dorr, 123 Ark. 542, 186 S. W. 62.

A private hospital conducted for gain is liable for the negligence or misconduct of its officers and employees. 1922, Jenkins vs. Charleston General Hospital and Training School (W. Va.), 110 S. E. 560.

[6] A hospital conducted for private gain is liable to a patient for injuries resulting from the negligence of nurses and employees, a patient being generally admitted either under an express or implied obligation to receive reasonable care and attention for his safety, such as his mental and physical condition, if known, should receive. 1920, Meridian Sanitarium vs. Scruggs, 121 Miss. 330, 83 So. 532.

CHAPTER IV

THE LIABILITY OF PUBLIC HOSPITALS FOR NEGLIGENCE AND NUISANCE

§ 130. **Liability of State Hospitals for Negligence and Nuisance.** The rule is well established in law that a state is not liable for the negligence or misfeasance of its officers or agents, except where such liability is voluntarily assumed by its legislature. The exemption is based upon the sovereign character of the State and its agencies.

Where individual rights have been violated by a person acting under authority of the State, the individual has no remedy against the State, except by express permission which has been granted only in contract claims.[1]

The injured individual has a right of action against public officials by whose illegal acts he was wronged. The official must be able to show a statutory basis for his act; that is, to make out his defense, he must show that his authority was sufficient in law to protect him.[2] Where the act is illegal or ultra vires the act of the official is not the act of the government but a private act of the official for which he, the official, may be held civilly and criminally responsible.

It should be pointed out here that state institutions, hospitals, asylums, etc., are usually created by general or special act of the Legislature which may by special provision permit it (the institution) to sue and be sued. But because an institution is suable, it does not necessarily follow that it is liable.[3]

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1 Under an implied contract where an orderly procedure can be shown, the intent upon the part of the government will be implied. 1884, U. S. vs. Great Falls Mfg. Co., 112 U. S. 645.

2 Willoughby, W. W., United States Constitutional Law, 1910, p. 1081.

3 1908, Napa State Hospital vs. Dasso, 153 Cal. 698, 96 Pac. 355.
1919, Watkins Boating Co. vs. State, 175 N. Y. S. 310.
1905, Matter of Hospital, 95 N. Y. S. 209.
1906, Leavell vs. Western Ky. Asylum, 122 Ky. 213, 91 S. W. 671.
1903, White vs. Ala. Insane Hosp., 138 Ala. 479, 35 So. 454.

It has been held that the State is not liable for the negligence or misfeasance of its agents, unless such liability has been voluntarily assumed by it by legislative enactment.[4]

The State cannot be held liable for the death of one lawfully present in a building at the State Hospital. A railroad car belonging to the State was used in connection with the hospital, running into the building. The car was negligently left insufficiently blocked upon a steep grade, after being negligently inspected and utilized by the State. The rule of "respondeat superior" does not apply in such a situation and the Court declared that, "For the negligence of the employees of the State, such employees, and not the State, are liable."[5]

It has been repeatedly held that an officer of the State in charge of an institution, is not liable in tort for acts done in the exercise of his official discretion.[6]

In administrative law the rule is generally held to be that certain officials can be forced to perform duties which are purely ministerial in character. In matters involving discretion a mandamus may be issued to require the exercise of that discretion, but it will not be issued to require its exercise in a certain way with the possible exception that it may be so issued when the circumstances are such as to warrant but one reasonable and justifiable conclusion.[7]

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4 The plaintiff in this case while a prisoner in the State Reformatory, was injured by the breaking of a ladle in which he was conveying molten iron; he had discovered a defect in the handle some time before and had called the overseer's attention thereto, but no attention had been paid to his complaint. It was held that the State was not liable and that no such liability was imposed, by the act creating the Board of Audit, or by that establishing the Board of Claims. 1884, Lewis vs. State, 96 N. Y. 71, see also, 1924, Barber vs. Spencer State Hospital, 95 W. Va. 463, 121 S. E. 497.

5 1907, Martin vs. Smith, 120 App. Div. 633, 105 N. Y. S. 540.

6 1909, Bollinger vs. Rader, 151 N. C. 383, 66 S. E. 314.
1903, White vs. Ala. Insane Hospital, 138 Ala. 479, 35 S. E. 454.
1903, Clough vs. Worsham, 32 Tex. Cir. App. 187, 74 S. W. 353.
1915, Emery vs. Littlejohn, 83 Wash. 334, 145 Pac. 423.

7 In the Bollinger case it was said, "The defendants could not, by the exercise of ordinary care and caution, have anticipated, foreseen, or expected that the death of the plaintiff's intestate would follow as the natural result of their act in discharging Rader from the hospital. Their erroneous or mistaken opinion or judgment that Lonnie Rader was sane, or insane, that his being at large would not be injurious to him or dangerous to the community, or that there were other sufficient reasons why he should be discharged, and their act in discharging him, did not cause her death. It may be that, if they had kept Rader confined in the State Hospital, he might not have

Nor is the official liable for the acts of his subordinates. A Kentucky case holds that neither the State nor its officials managing state institutions as a governmental duty and without profit, are liable for the wrongdoing of one, acting under them, who by his negligence inflicts injury on another; but the liability therefor is on the person guilty of the negligence.[8]

"The principle 'respondeat superior' does not apply to public officers, such as are sued herein, but applies to individuals and corporations who employ servants in the further-

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killed her. The discharge of Rader, his absence from the hospital, his presence in Catawba County, and his presence at church on the day of the homicide, was a mere condition which accompanied, but did not cause the injury." 1909, Bollinger vs. Rader, 151 N. C. 383, 66 S. E. 314.

In the case of Clough vs. Worsham inmates of a lunatic asylum were employed in doing certain outdoor work; the patients who were in proper condition to do such work being selected from each ward by the physician in direct charge of the ward on the requisition of the manager of the asylum. The superintendent of the asylum had general supervisory control, but had no personal knowledge as to what inmates were selected by the physicians in charge of the various wards. One of the inmates so selected, negligently drove a team through the streets of the city so as to cause injury to a pedestrian on the sidewalk. The Court held that the superintendent was not guilty of negligence in allowing the patient who inflicted the injury to be employed outside the asylum; and the negligence, if any, was that of the physician in charge of the ward. 1903, 32 T. C. A. 187, 74 S. W. 353.

It was held in Emery vs. Littlejohn that the general superintendent of a lunatic asylum is not responsible for injuries to third persons caused by the negligence of a ward physician in improperly allowing an incompetent person to be taken outside of the grounds of the asylum for the purpose of doing work.

The superintendent of a state hospital, to which one P. has been committed, after two weeks released him in charge of his mother, who signed the usual writing certifying that she had taken P. on parole, knowing that he was not fully recovered, and assumed all responsibility for his actions, that she agreed to care for him, and return him to the hospital, if necessary. She took him home, and, after complaint of his letters alarming a girl in a show, gave him money to go East to relatives. Instead of doing this he followed the girl, called at the plaintiff's theater to see her, and while plaintiff was listening to his request to see her, shot him. The Court held that, as the statute gave the superintendent an official discretion to release a patient, he was not liable to plaintiff in damages. 1915, 83 Wash. 334, 145 Pac. 423. See also: 1923, Austin W. Jones Co. vs. State (Me.), 119 Atl. 577; 1923, City of Shawnee vs. Jeter (Okla.), 221 Pac. 759; 1923, City of Shawnee vs. Roush, 101 Okla. 60, 223 Pac. 354.

[8] Since the funds collected by taxation for the maintenance of a state lunatic asylum are collected for a charitable purpose, and since the asylum is managed by the State under a governmental duty and without profit, the funds cannot be diverted to pay judgments for injuries on inmates by employees when acting beyond Control, 131 Ky. 287, 115 S. W. 200. See also, 1923, Dunn vs. Central State Hospital (Ky.), 248 S. W. 216.

ance of their private business. . . . The officers sued in the case at bar were appointed to their positions for the purpose of the administration of a public benefit and necessity, and were directed and compelled by law to employ persons to assist in the proper performance of the functions of that office. To apply the rule that exists with reference to master and servant to such officials as appellee would do violence to the principle on which the rule is based, and would have the effect to prevent persons of responsibility from accepting such position. . . . The under officers appointed by the Board of Control and Redwine did not act, in the performance of their duties, as the servants of or for the benefit of the Board and Redwine, but were supposed to act for the good of the public in the furtherance of a charity, and, therefore, the Board and Redwine are not responsible for their acts.''[9]

Where the official acts outside his power, although perhaps in good faith, his acts are ultra vires and neither the State nor its institution can be held liable for his acts.[10]

The distinction may be made here between the official act, the discretionary act and the ministerial act. What is an official act, when is it discretionary and when ministerial? In other words, when does an officer, acting in good faith perhaps, exceed his authority? Does he act at his own peril or what constitutes an abuse of discretion or authority?

In the Votsberger case it was held that, an officer cannot be held liable for any mistake made when acting in judicial or quasi-judicial capacity, but this rule does not apply to ministerial acts in excess of authority. For example, the acts of the superintendent of an insane asylum as to custody and disposition of money found on a patient are ministerial acts, as to which he may be made to respond in law.

Unless authorized by law or a valid rule of the board of managers, the superintendent of an insane asylum has no authority to deliver to a person, claiming it adversely, money which has been taken from the person of an inmate.[11]

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9 1909, Same, 131 Ky. 287, 115 S. W. 200.

10 1910, Worsham vs. Votsberger (Tex.), 129 S. W. 157.

11 In this case a rule of an insane asylum required patients entering the hospital to be searched and money or other things of value taken from their person and to be deposited with the superintendent. It was the duty of the superintendent to keep the same for the patient or turn it over to the guardian, relative, or friend,

While a ministerial officer in possession of property law fully received is not an insurer of its safety, he must exercise reasonable care to preserve it for restoration to the person entitled thereto, or for its disposition by law.

§ 131. **Liability of Counties and Other Quasi Corporations.** There are in the United States two classes of public corporations known in law as quasi corporations and municipal corporations. In the first category are included those subdivisions of the state territory, such as counties, townships, school districts and other bodies created by the Legislature for public purposes and without regard to the wishes of the inhabitants. They are simply the agencies of the State established to aid in the general administration of the State government, their powers and duties are those of the State and they are not liable for negligence or misfeasance in the performance of their duties unless liability is created by statute.

The general rule of law, that the superior or the employer must answer civilly for the negligence or want of skill of his agent or servant in the course or line of his employment, by which another is injured, does not apply to counties. They stand on a different footing, in this respect, from individuals and private corporations, and from municipal corporations proper, such as cities and towns, acting under charters or incorporating statutes.[12]

Counties are involuntary quasi corporations, being politi-

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interested in him and looking after his welfare. The Court held that this rule did not conflict with the common-law requiring a ministerial officer to exercise reasonable diligence to preserve property in his possession for restoration to the person entitled thereto or for its disposition as directed by law. In this case a sister of a patient claimed that certain money on his person had been stolen, and requested its delivery to her as the rightful owner. The Court held that this sister was not a relative interested in looking after the patient's welfare within the rule just stated, and that if a rule of an asylum goes to the extent of authorizing the superintendent to take the property of a patient and deliver it to any other person not acting for and on his behalf, but asserting adverse ownership, it is inconsistent with the general common-law requiring diligence to preserve private property in official custody.

This was also held to be a violation of the constitutional guarantees prohibiting the taking of any property without due process of laws. 1910, Worsham vs. Votsberger (Tex.), 129 S. W. 157.

A city in managing a hospital provided for in its charter, acts in a governmental capacity as an arm of the state, distinguished from its corporate capacity. The city is not liable for the death of a patient in such hospital, though he was negligently placed in a cell with an insane patient. 1920, Zummo vs. Kansas City (Mo.), 225 S. W. 934.

12 1874, Symonds vs. Clay County, 71 Ill. 357.

cal or civil divisions of the State, and are created by general laws, to aid in the administration of the government. The statute which creates them prescribes the government. The statute which creates them prescribes all their duties and imposes all the liabilities to which they are subjected, and, unless made so by express legislative enactment, they are not liable to persons injured by the wrongful neglect of duty or wrongful acts of their officers or agents, done in the course of the execution of the corporate powers or in the performance of corporate duties. The rule is the same in respect to such other organizations as townships, school districts, and road districts.[13]

An early case arose in California where the plaintiff in action sought to recover compensation from the county of Yuba for the damage which he, as a patient, sustained. The patient claimed that he received unskilful and insufficient treatment from the resident physician and that insufficient and unwholesome food and other necessaries were supplied to him while in the county hospital as an indigent sick person.[14]

"The plaintiff insists," said the Court, "that the county is required by law to provide for its indigent sick in a suitable manner, and is liable for the misfeasance of its employees. No case has been cited to us in which such action has been sustained; nor do we think the action can be sustained upon principle. Private corporations and municipal corporations may be liable for the acts of their employees, of whom they have the appointment and supervision, and when the duty to be performed is for the benefit of the corporation. But a quasi corporation, like a county, is not liable for the acts of officers or employees which it appoints in the exercise of a portion of the sovereign power of the State, by the requirements of a public law, and simply for the public benefit, and for a purpose from which the county, as a corporation, derives no benefit."

An Indiana case holds that where it does not appear that

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[13] In an Illinois case where the authorities of a county employed an agent to carry on its poor farm, and clear up a portion of it, which was in brush, and the agent, in burning the brush, carelessly or negligently permitted the fire to spread to an adjoining farm, whereby the owner thereof sustained damage, it was held that the county was not liable. 1874, Symonds vs. Clay County, 71 Ill. 357.

[14] 1862, Sherbourne vs. Yuba County, 21 Cal. 113, 81 Am. Dec. 151.

a board of commissioners did not exercise care and diligence in the selection of a physician for the poor, there can be no negligence. Where the duties delegated to officers elected by public corporations are political or governmental, the relation of principal and agent does not exist, and the maxim of respondeat superior does not govern.

"Counties are the instrumentalities of the government and are not liable for injuries caused by the negligence of the commissioners in the selection of an unskilful or incompetent physician for the care of the poor."

"In providing for the care of the poor, a police power which resides primarily in the sovereignty is exercised, and neither the sovereign nor the local governing body to whom such a power is delegated is responsible for the misfeasance of its officers."[15]

Where an employee has been injured there may or may not be compensation for damages. For example, a man who was confined in the Rockingham County Workhouse was put to work by one of the commissioners on a hospital the county was building. While he was thus employed he was seriously injured because of the unsafe staging which was provided. It is pointed out that the county is a territorial division of the State created for the more convenient exercise of government, and "in the absence of a statute impressing liability is generally conceded to be not liable to persons injured by their neglect of duty."[16]

§ 132. **Liability of Municipal Corporations.** A municipal corporation is created by special charter or by general law. It is a governmental instrumentality in a certain sense and while acting in this capacity is afforded complete immunity from civil responsibility for acts done or omitted, unless such responsibility is expressly created by statute. In its private or proprietary capacity it is dealing with property held for its own private gain, and is generally held responsible for its acts.[17]

The distinctions in municipal functions were set forth

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15 1885, Summers vs. Daviess County, 103 Ind. 263.

16 1923, O'Brien vs. Rockingham County (N. H.), 120 Atl. 255.

Where an employee has been injured in the district tuberculosis hospital of the county, the district is not liable under the compensation law since it did not accept same. 1924, Peck's Case (Mass.), 145 N. E. 532.

17 Williams: The Liability of Municipal Corporations for Torts, p. 9.

by the New York Court of Appeals in the following language:[18] "There are two kinds of duties which are imposed upon a municipal corporation: One is of that kind which arises from the grant of a special power, in the exercise of which the municipality is a legal individual; the other is that kind which arises or is implied, from the use of political rights under the general law, in the exercise of which it is a sovereign. The former power is private and is used for public purposes. . . . The former is not held by the municipality as one of the political divisions of the State. . . . In the exercise of the former power, and under the duty to the public which the acceptance and use of the power involves, a municipality is like a private corporation, and is liable for a failure to use its power well, or for an injury caused by using it badly. But where the power is intrusted to it as one of the political divisions of the State, and is conferred not for the immediate benefit of the municipality, but as a means to the exercise of the sovereign power for the benefit of all citizens, the corporation is not liable for non-use, nor for misuse by the public agents. . . . Where the duties which are imposed upon municipalities are of the latter class, they are generally to be performed by officers who, though deriving their appointment from the corporation itself, through the nomination of some of its executive agents, by a power devolved thereon as a convenient mode of exercising a function of government, are yet the officers, and hence the servants, of the public at large. They have powers and perform duties for the benefit of all the citizens, and are not under the control of the municipality which has no benefit in its corporate capacity from the performance thereof. They are not then the agents or servants of the municipal corporation, but are public officers, agents or servants of the public at large, and the corporation is not responsible for their acts or omissions, nor for the acts or omissions of the subordinates by them appointed; . . . and where a municipal corporation elects or appoints an officer, in obedience to an act of the Legislature, to perform a public service, in which the corporation has no private interest and from which it derives no special benefit or advantage in its corporate capacity, such officer cannot be

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[18] 1875, Maximilian vs. Mayor of New York, 62 N. Y. 160.

regarded as a servant or agent of the municipality, for whose negligence or want of skill it can be held liable. It has appointed or elected him, in pursuance of a duty laid upon it by law, for the general welfare of the inhabitants of the community. . . . He is the person selected by it as the authority empowered by law to make selections; but when selected and its power exhausted he is not its agent; he is the agent of the public for whom and for whose purpose he was selected. So that it may be, that a driver of an ambulance wagon owned by the defendant, is neither its servant nor under servant, for whose negligence it is responsible."[19]

"But when it is determined that the power and duty are given and taken for the benefit of the corporation as a corporate body, and the act to be done is to be done by it through agents of its appointment and under its control and power of removal, there is no doubt of its liability for negligent omission or negligent attempt at performance. When the powers created and duly enjoined are given and laid upon officers and as a convenient method of exercising a function of general government, and the corporation has no immediate control nor immediate power of removal of those officers, nor of their subordinates and servants, then it is not liable for their negligent omission or action."[19]

In order to establish the liability of a municipal corporation for the tortious acts of its officers or agents, it is essential first that these acts be within the scope of the corporate powers, as provided by charter or positive enactment of law. If the acts complained of were outside of the authority and power of the corporation as conferred by the Legislature, it is not liable, whether the officers directed the performance or the acts were done without any express direction. Such acts are ultra vires and consequently void.[20]

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19 1875, Same, 62 N. Y. 160.

20 A municipal corporation is not liable for the negligence of firemen while engaged in the discharge of their duties; the members of its fire department act not as its servants or agents, but as officers charged with a public service, for whose negligence therein no action lies against it . . . 1879, Smith vs. City of Rochester, 76 N. Y. 506.

The health officers of a city requested and directed a passer-by, to assist them in removing a coffin from the house, which he did. The coffin contained the body of a person who had died of small-pox, which fact was known to the officers, but was not communicated to the plaintiff. The plaintiff caught the disease and communicated it to his children who died, thereof. The Court

The performance of duties which relate to the preservation of the public health, and to the care of the sick concern the public as a whole and is governmental in character for the neglect of which the corporation is not liable.[1]

The rule of liability applied to private corporations conducted for profit is not applied to municipal corporations when performing a governmental function.

"We are inclined to think," said the Court in a Missouri case,[2] "that a distinction should be drawn in this particular between private corporations, which are organized and conducted solely for the purpose of private and personal emolument, and public corporations, created by government for political purposes and exercising authority, delegated by the State, for the administration of local and internal affairs of a city or town of a public character. . . . Besides the relation which the officers of a municipal corporation sustain toward the citizens thereof for whom they act, is not in all respects identical with that existing between the stockholders of a private corporation and their agents; and there is not the same reason for holding municipal corporations, engaged in performance of acts for the public benefit, liable for the willful or malicious acts of its officers, as there is in the case of private corporations."

In Monyhan vs. Todd it was said that " . . . it has always been held in the American Courts that an agency of government or a public officer, while performing a duty imposed solely for the benefit of the public, is not liable for a mere failure to do that which is required by the statute.[3] Negligence that is nothing more than omission or non-feasance creates no liability.[4]

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held that plaintiff had no cause of action against the city. 1872, Ogg vs. Lansing, 35 Iowa 485, 14 Am. Rep. 499.

In discharging these legislative functions (to establish and organize fire companies; to establish pest-houses and hospitals, etc.), the city acts as a quasi sovereignty, and is not responsible to individuals for neglect or non-feasance of its officers or agents. 1869, Wheeler vs. City of Cincinnati, 19 Ohio St. 19, 2 Am. Rep. 268; 1867, Brinkmeyer vs. the City of Evansville, 29 Ind. 187; 1861, Western College of Medicine vs. City of Cleveland, 12 Ohio St. 375. 1872, Ogg vs. City of Lansing, 35 Iowa 495, 14 Am. Rep. 499.

1 Williams: Liability of Municipal Corporations for Tort, p 41, Sec. 21; McQuillin: Municipal Corporations, Vol. VI, Sec. 2669, p. 5497.

2 1877, Hunt vs. Boonville, 65 Mo. 620, 27 Am. Rep. 299.

3 1905, 188 Mass. 301, 74 N. E. 367.

4 Russell vs. Men of Devon, 2 T. R. 667, cited in the above.

"We are of opinion that the principle which underlies the rule that public officers and other agencies of government are not liable for negligence in the performance of public duties goes no further than to relieve them from liability for non-feasance and for the misfeasances of their servants or agents. For a personal act of misfeasance we are of opinion that a party should be held liable to one injured by it as well when in the performance of public duty as when otherwise engaged. We think that the general course of decision in this Commonwealth is not in conflict with this view. But for acts of misfeasance of a servant or agent in such cases there is no liability. This is because the rule of respondeat superior does not apply."[5]

There is an exception to the last branch of the rule. "Whenever the work is not entirely public, but is in part for profit, or when any element of pecuniary liability enters into it, there is a liability for the negligent acts of servants. On this ground it was long ago held that a city or town might be liable for negligent acts of misfeasance done by its servants in the construction or repair of a common sewer. . . . Another line of cases[6] holds that a city, which by its agents and without authority of law, makes or empties a common sewer upon the property of another to his injury, it is liable to him in action of tort.[7] But in such cases the cause of action is not neglect in the performance of a corporate duty, rendering a public work unfit for the purposes for which it is intended, but it is the doing of a wrongful act causing direct injury to the property of another, outside the limits of the public work."[8]

The case of Murtaugh vs. City of St. Louis[9] was an early hospital case on this point. The plaintiff in the case was a non-paying patient in the St. Louis City Hospital. While

5 1905, Same, 188 Mass. 301; 74 N. E. 367.

6 1865, Wheeler vs. Worcester, 10 Allen (Mass.), 591, etc.

7 1856, Proprietors of Locks and Canals vs. Lowell, 7 Gray (Mass.), 223, etc.

8 "The result is that, if the jury in the present case find that the defendant was personally negligent in causing the rock to be blasted without taking proper precautions for the safety of persons rightfully in the vicinity, a verdict should be rendered against him; but if there was no negligence in blasting the rock, or if the only negligence was that of the defendant's servants or agents, he is not liable." 1905, Moynehan vs. Todd, 188 Mass. 301, 74 N. E. 367.

9 1869, 44 Mo. 481.

there he suffered certain physical injuries, which he alleged were caused by the negligence and misconduct of hospital officials and servants. Suit was brought against the city to recover damages for these alleged injuries. At the trial in the Circuit Court, the verdict was for the plaintiff and the defendant appealed. The case brought up the question whether the city is liable for the negligence and misfeasance of the hospital authorities and servants in the administration of this particular charity. "No provision of the city charter or of any ordinance is cited in support of the action," said the Court, "nor is any authority or any specific legal principle invoked in its aid. The action is conceded to be of new impression, and is without precedent in this State. There have been, however, various adjudications upon the general question of the liability of municipal corporations for the acts and omissions of their officers and servants. The general result of these adjudications seem to be this: where the officer or servant of a municipal corporation is in the exercise of a power conferred upon the corporation for its private benefit, and injury ensues from the negligence or misfeasance of such officer or servant, the corporation is liable, as in the case of private corporations or parties; but when the acts or omissions complained of were done or omitted in the exercise of a corporate franchise conferred upon the corporation for the public good, and not for private corporation advantage, then the corporation is not liable for the consequence of such acts or omissions on the part of its officers and servants. . . ."[10]

It was held that action could not be maintained because as a quasi corporation the city cannot be held liable for its own neglect of duties enjoined by the Legislature in the absence of a statute expressly approving the liability.[10]

In a Kentucky case an industrial school of reform, maintained by taxation and state aid, for the charitable purpose of reforming youthful criminals, was held not liable to one of its inmates for an assault upon him committed by an employee of the school who was incompetent and unfit for the service required of him. The employee making such assault alone is responsible for the damage inflicted by him. "The incorporators and their successors are under the control

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[10] 1869, Same, 44 Mo. 481.

and oversight of the Legislature, and are mere instrumentalities of the Commonwealth. The State interposes in behalf of neglected and abandoned children within its confines in its capacity of parens patriae, and assumes guardianship of such children as were committed to the institution. It was an agency of the State and maintained by taxation and state aid. . . . The functions of the institutions are governmental. . . . If the funds of these institutions are to be diverted from their intended beneficent purposes by law suits and judgments for damages for negligent or malicious servants, their influence, indeed their existence, will soon be a thing of the past."[11]

Similarly in an Indiana case it was held that neither the city, nor the department of health, is liable for injury to a patient in the City Hospital.[12]

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11 1894, Williamson vs. Louisville Industrial School of Reform, 95 Ky. 207, 24 S. W. 1065.

The facts in the following Kansas case were that dynamite caps were used in blasting preparatory to installing water and sewer systems in the city's detention hospital while it was under construction. Employees of the city negligently failed to remove an unused sack of caps from the ground on completion of the hospital. The plaintiff, a child of nine years, was taken to the hospital with his parents who were afflicted with smallpox, and was allowed to play about the grounds. He found the caps and exploded one of them and was injured. The hospital was established, owned, and maintained by the city for the sole purpose of detaining and treating persons afflicted with smallpox. The Court held that the city was not liable in damages for the plaintiff's injury, the Court declaring:

"While the hospital, with its equipment and grounds, was property of the city, it was property held and maintained in a public and governmental capacity, and not in a private proprietary capacity. The sole object in establishing and maintaining the hospital was to conserve the public health, a purely governmental function exercised under the police power of the State. The enterprise was public and governmental from its inception, and in doing the work of constructing the building and installing the water and sewer systems, the city acted as an agency of the State in promoting the general welfare. While the dynamite caps were property of the city, they were mere contributions to the enterprise, the same as building material, water-pipe, sewer-pipe, and other articles necessary to secure the end in view."

"The power and the duty to conserve the public health are not matters of private and local interest to the city alone, but are public and general in their nature and belong to the same class as the power and duty to conserve the public peace."

1916, Frost vs. City of Topeka, 98 Kans. 636, 161 Pac. 936, and 1918, Frost vs. City of Topeka, 103 Kans. 197, 173 Pac. 293.

12 The appellant in the case brought her action for damages against the appellee (the city), "averring that it was a duly incorporated city, having power to maintain a hospital for the treatment of sick and diseased persons under such rules as it might prescribe; that

In Massachusetts[13] the trustees of the city hospital of the city of Boston were held not liable for injuries received through the negligence of their officers and agents.

This was an action of tort, to recover damages for personal injuries sustained by the plaintiff by falling down a flight of stairs in the city hospital of Boston, on account of alleged unsafe condition of the board coverings of the stairs. The Superior Court ruled that the action could not be maintained under the circumstances, and directed a verdict for the defendants. The plaintiff appealed.

The Supreme Court said: "There is no evidence of negligence on the part of the trustees as a corporation. There is evidence of negligence on the part of the superintendent, but there is no evidence that he was not a proper person to be appointed superintendent. But we think that this hospital is maintained by the city, with such aid as may be derived from donations, and the dues received from paying patients, and that the trustees are, in a sense, managing agents only, in maintaining the hospital subject to the laws and to the ordinances of the city. The donations, if any are ever made, must be used according to the terms of the gift. The money appropriated by the city of Boston must be used according to the terms of the appropriation. The sums received from paying patients are by the ordinances to be 'credited to the account of the hospital' and are 'used in support of the hospital.' All the funds are used for the purpose of maintaining the hospital in accordance with St. 1858, C. 113. The corporation of the trustees of the city hospital of the city of Boston has, in fact, no property. . . . The trustees are a body created for the performance of a duty which, under the authority of the statute, the city of Boston has assumed for

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certain ordinances were in force on June 8, 1898, by virtue of which appellant, having a broken arm, and being unable to pay for her treatment was admitted to said hospital as a non-paying patient, and remained therein for eleven days; that her arm was negligently and unskilfully treated by one Frank Kirtner, who was employed in said hospital as a physician and surgeon, by reason of which she lost the use of her hand, arm, and wrist; that appellee negligently employed said surgeon, who was incompetent and unskilful, and by reason of his negligence appellant was damaged in the sum of $5,000 . . . " 1901, Williams vs. City of Indianapolis, 26 App. 628, 60 N. E. 367.

[13] 1885, Benton vs. Trustees of Boston City Hospital, 140 Mass. 13, 1 N. E. 836.

the benefit of the public, and from the performance of which no profit or advantage is received either by the trustees or the city. The trustees are no more liable for the negligence of their officers and agents than the city would be."[14]

In another Massachusetts case it was held that, "A city is not liable for an injury resulting to an inmate of a workhouse from the negligence of the officers in charge, though its construction was authorized, but not required, by statute, and some revenue is derived from the labor of the inmates, especially where its officers are appointed by a public board vested with the administration of public institutions, though such board is elected by the city council."[15]

"It is a general principle," declared the Court, "that municipal corporations are not liable to private actions for omissions or neglect in the performance of a corporate duty imposed upon them by law, or that of their servants engaged therein, where such city derives no benefit therefrom in its corporate capacity, unless such action is given by statute. . . . the city cannot be held liable upon the ground that the workhouse was established by it voluntarily.[16]

"Upon another ground, also, the city cannot be held liable for the alleged negligence of the officers and servants engaged with the plaintiff in the work in doing which he was injured. When the city established the workhouse, the inspection, ordering, and government thereof was placed in the hands of the board of directors of public institutions for the county of Suffolk. This was a board of public officers whom the city council of Boston were required to elect by concurrent vote. While certain powers are given to this board by statute, and certain ordinances may be passed by the city council, not inconsistent with the statute, as to the performance of their duties, it is an independent body, in whom is vested the administration of the public institutions. It is not an agent

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14 1885, Same, 140 Mass. 13, 1 N. E. 836.

15-16 "The plaintiff was an inmate of the workhouse . . . belonging to . . . . Boston . . . having been convicted of a misdemeanor, and having been legally sentenced to confinement there. He was injured while engaged in unloading coal and, it must be assumed, was prepared to prove that he himself was in the exercise of due care, and that the officers and servants employed in this institution were negligent." 1890, Curran vs. City of Boston, 151 Mass. 505, 24 N. E. 781.

of the city, nor does it perform any duties as such. As the board is not in any proper sense the agent or servant of the city, those whom it employs cannot be so considered.

"Nor do we perceive any reason why the city should be held responsible because some revenue is derived from the labor of the inmates. It is required by the statute that these inmates should be kept at work, but the institution is not conducted with a view to any pecuniary profit. It is not suggested that the expenses of maintaining the workhouse are met by what is derived from the labor of the inmates, or that any profit above them is made. Even if the entire expense is not met by taxation, by reason of the profit thus derived, such profit is purely incidental. The object and purpose of the workhouse, and the conduct of it, are not thus shown to be of the nature of a business. It only appears, that as a public institution, it is managed in a judicious and economical manner."[17]

A city which is sued for damages is not liable to a fireman who contracted smallpox while not engaged in his duty as a fireman.[18]

"The handling of persons sick with contagious diseases," declared the Court, "is a duty which the city performs through its officers and agents in the exercise of governmental functions. The benefits of such service go to the public, and

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[17] 1890, Same, 151 Mass. 505, 24 N. E. 781.

[18] The appellant sued the respondent, a city of the third class, for damages, and in his complaint he sets forth two alleged causes of action. "In his second alleged cause of action, he sets forth his employment as mentioned (employee in fire department) and that he was required to be and remain at a certain building in a certain room where the fire apparatus and horses were kept, so as to be in readiness in case of a fire alarm; and that . . . while in said room, one of the respondent's policemen brought in a man "charged with having been exposed to smallpox" and whom said officer should have known by the use of ordinary care to have been so exposed; that while in said room the man was fumigated by this appellant, and thereupon left the room; that by reason of said exposure this appellant contracted the smallpox, and, before he was aware of that fact, four of his children contracted the disease from him; that appellant was thus exposed and sickened by reason of the negligence and carelessness and lack of ordinary care on the part of respondent in not providing by ordinance or otherwise a place for persons who had been in contact with the smallpox to be taken away and apart from the other persons, and in not directing its officers and policemen to keep such exposed persons thus apart from others . . . 1905, Lynch vs. North Yakima, 37 Wash. 657, 80 Pac. 79.

not to the municipality as a corporate body. Hence the manner in which the officers of the city perform said service cannot, ordinarily, render the municipality liable in damages. . . . It appears that when the smallpox patient was brought into the building, the appellant, instead of withdrawing, remained there, and proceeded to fumigate the unfortunate victim. It does not appear that this was any part of the duty which he was employed or directed to perform. It certainly increased the likelihood of his contracting the disease. If the city were, in the first instance, liable because its policeman brought this afflicted man into the room where appellant was staying, it would seem clearly that the appellant by remaining in the room and doing as he did, contributed to the cause of his misfortune. It certainly increased the likelihood of his contracting the disease, and it cannot be said that he would not have taken the disease anyhow if he had not so stayed and fumigated the man."[19]

It has been held that a town is not liable when the selectmen of a town, in the performance of a duty imposed upon them by statute, employed a person as nurse in a smallpox hospital, established by the town and suffered him to depart without being properly disinfected, whereby plaintiff caught the disease.[20]

"The plaintiffs base their claim upon the mistaken idea that the selectmen, in the performance of the duties imposed upon them by the statutes in such cases, sustain to the town by whom they are elected, the relation of a servant to his master or an agent to his principal, and that the rule respondeat superior applies, if they conduct themselves carelessly or unskilfully. It is not pretended that the statute gives a remedy against the town to anyone injured by reason of the negligence, ignorance, or inefficiency of the town officers or those employed by them in these matters. By chapter 14, section 10, the town is required to pay a just compensation to parties interested when the proper officer upon due proceedings had, impresses or takes up any houses, stores, lodging, or other necessaries, or impresses any man under the provisions of the chapter. But beyond this, as to any liability of the town for the doing, misdoings, or omissions of its

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19 1905, Same, 37 Wash. 657, 80 Pac. 79.

20 1876, Brown vs. Vinalhaven, 65 Me. 402, 20 Am. Rep. 709.

officers in the performance of the duties imposed upon them by law, the statute is silent.[1]

"The liability of a town upon contracts made within the scope of their authority, about the affairs of the town by such officers as are also its agents, is unquestionable. But its responsibility for the torts or neglects of its officers in the performance of duties imposed upon them by law has never been affirmed, unless created by express statute provisions."[1]

In the absence of a statute making express provisions the Michigan courts have held that a municipality is not liable for injuries received through the negligence of its officers while acting in the capacity of governmental agents.[2] The defendant city, through its officers, employed plaintiff's intestate to tear down a building that had been used as a smallpox hospital, and to construct another building adjacent thereto for the same purpose, both being located on land owned by the city. No measures were taken to disinfect the premises, nor was the intestate warned of the danger of infection. He contracted the smallpox and died and the Court held, that the city was not liable for the negligence of its officers, as it was acting in a governmental capacity.

Excerpts from the Court's opinion follow: "The action of the city in obtaining and owning the land and erecting the hospital is as much an act of a governmental agent as the transportation of a patient thereto and his treatment therein would be. It is land owned for governmental purposes, by governmental authority, by a governmental agency, it is true, but not for the private purposes of the municipality as such, and for purposes in which the State has no interest."

". . . if there is culpable negligence here, the plaintiff's remedy is limited to the persons to whose negligence the deplorable event is due. . . . It is not a case where the doctrines of imputed negligence and respondeat superior can be applied."[3]

"The true theory is that the township or city represents the State, in causing these things to be done, and, like the State, it enjoys immunity from responsibility in case of injury

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1 1876, Same, 65 Me. 402, 20 Am. Rep. 709.

2-3 1902, Nicholson vs. Detroit, 129 Mich. 246, 88 N. W. 695.

to individuals, leaving liability for such injuries to rest upon the persons whose misconduct or negligence is the immediate cause of the damage. The township and city must always act through officers. If it builds or repairs a road, constructs a bridge, collects a state or county tax, erects a townhouse, or provides a smallpox hospital, it must do it through persons selected for the purpose; and whether the law broadly directs that it shall do these things, or shall select officers whose duties are prescribed by law, its obligations are the same. The State relieves itself from the burden of multitudinous detail by delegating to and imposing upon aliquot parts of the body politic the power and perhaps the duty, of doing for the State what it would otherwise have to supervise for itself. These powers are frequently legislative as well as ministerial. In this sense the township or city is a political agency, and the persons selected to perform the details whereby the result is accomplished are no more agents of the city or township, and no less the agents of the State, than as though the legislation had been more definite in prescribing the duties of the officers, and merely left their selection to the municipality. In imparting a portion of its powers, the State also imparts its own immunity. Cities are upon the same footing as quasi corporations, when acting in a purely governmental capacity.''[4]

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4 1902, Same, Nicholson vs. Detroit, 129 Mich. 246, 88 N. W. 695. An action was brought against the city of Richmond, Va., to recover the value of a slave, who it was alleged, had lost his life through the carelessness and negligence of the city. In the opinion of the Court, "Public officers of the government are not liable, in performance of their official subordinates. But they are responsible for their own acts in the abuse of transgression of their authority, or in default of proper and reasonable care in the choice of their agents, or in the superintendence of them in the discharge of their allotted duties.

"Municipal corporations are not liable, in the exercise of their political, discretionary, and legislative functions, for the misconduct, negligence, or omissions of the agents whom they employ. But in the discharge of ministerial or specified duties assumed in consideration of the privileges conferred by their charters, they are liable for the misconduct, negligence, or omissions of their agents, even in the absence of special rewards or damages . . . ."

The city was not held liable for the loss of a slave admitted to the city hospital, by reason of the negligence of the city's agents at the hospital.

" . . . exemption from liability exists in behalf of all public officers of the government in the performance of their public functions, including all grades of officers, whose trust proceeds from and whose responsibility is due to the government. Their immunity from all liability for the misconduct, negligence, and omissions of their subordinates rests upon motives of public policy, the necessities of the public service, and the perplexities and embarrassments of a

A municipality exercising quasi private or corporate duties is liable for the acts of its officers, but a municipality which is exercising governmental functions is not liable, and where a city exercises a governmental function in maintaining a police station, which is used in part as a jail for prisoners, as well as in part for the accommodation of its police force, it is not liable for the negligence of an employee in charge of the elevator therein.[5]

A charitable institution was organized to maintain an industrial school for the support and education of male

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contrary doctrine. Still, these officers are held responsible for their own acts in the abuse or transgression of their authority, or in default of proper and reasonable care in the choice of their agents or in the superintendence of them in the discharge of their allotted duties. But it is now firmly established that the doctrine of respondeat superior does not apply to them. Within the sphere of political, discretionary, and legislative functions, municipalities, "are entitled to this exemption; inasmuch as the corporation is a part of the government to that extent, its officers are public officers, and as such are entitled to the protection of this principle; . . .

"Whenever it can be said that distinct duties are imposed upon a corporation, purely ministerial and involving no exercise of discretion, the same liability attaches as in the case of private persons among the same service under the law . . . and . . . . it does not matter . . . , if there be the absence of special rewards or advantages, it being considered and allowed that such gratuitous function is to be regarded as a burden accepted under the charter in consideration of its privileges.

"It is in pursuance of a statute—providing against the spread of contagious diseases, and arms the counties and towns of the State with large powers to attain this end, rightly subordinating to the public safety the usual immunities of persons and property. In the passage of this ordinance, then, the council with whom are lodged all corporate powers and franchises, was legislating by directions of law for the sanitary police of the city, and providing the usual accommodations and public charities for the care and cure of the diseased. Under such a state of facts to require the city to answer for the negligence or misconduct of the superintendent, matron, nurses, or attendants of the hospital would seem to me to subvert the fundamental doctrines of the law as I understand and have sought to expound them. Analogy, I know, is a dangerous resort in argument; yet I cannot forbear saying that if this recovery could be made I do not perceive why, . . . , the State should not be held liable through its public functionaries in civil actions at the suit of individuals for losses or torts occurring in the management of its departments and public institutions under its immediate control and supervision. It cannot be denied that in the municipal government of this city the council occupies towards its hospitals relations quite similar to those of the general assembly towards its asylums for the insane, the blind, and deaf mutes." 1867, Richmond vs. Long's Adm., 17 Grattan (Va.), 375, 94 Am. Dec. 461.

5 A journeyman sheet metal worker was injured by falling to the bottom of the elevator well, through an open door in the elevator shaft at the jail. 1907, Wilcox vs. City of Rochester, 190 N. Y. 137, 82 N. E. 1119.

orphans, to which the magistrates were authorized to send minors convicted of crime. The school was held by the Court to be a governmental agency so far as the courts are concerned. As such the school was not liable to a minor, legally committed to it for a crime, for personal injuries sustained, which resulted from the negligence of the defendant's managers in failing to warn him as to the dangers incurred in operating the machine at which he was set to work.[6]

On the other hand, where the Legislature has enacted a general law relative to the employment of labor, the city institutions are not exempt from the enforcement of that law. The statute may specify such application.

A municipal corporation acts in a governmental capacity as an agent of the State, assisting in the government of the territory within its limits, and in a private capacity as the representative of the proprietary interests appertaining to it in common with other corporations. Where the power conferred on it has relation to public purposes for the public good, that power may be classified as governmental appertaining to the corporation in its political capacity. Where the power relates to the accomplishment of private purposes in which the public is only indirectly concerned it is private, and the municipality in respect to its exercise is deemed a legal individual, and in the former case the corporation is exempt from all liability for non-uses or misuses, while in the latter case it is responsible just as any ordinary corporation.[7]

The Woman's Ten Hour Law prohibiting the employment of women in any public institution, incorporated or unincorporated, more than ten hours during any one day, has been held to embrace such an institution as the Isolation Hospital owned and operated by the city of Chicago, and applies to public institutions or municipalities.

The Legislature may authorize a municipal corporation to take such action as is necessary to prevent the spread of pestilence. This is frequently done by a general statutory grant and the corporation is not liable for the enactment and

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6 1903, Corbett vs. St. Vincent's Industrial School of Utica, 177 N. Y. 16, 68 N. E. 997.

7 1912, People vs. Chicago, 256 Ill. 558, 100 N. E. 194.

enforcement by the board of health of regulations which are within this conferred power as is shown by the following case:[8]

A physician who is employed by a city to treat patients at the city almshouse is liable to one of such patients who is injured through the physician's negligence, though there is no contractual relation between such patient and the physician.[9]

"It has been held that the fact that a physician or surgeon renders services gratuitously does not affect his duty to exercise reasonable and ordinary care, skill and diligence.[10] But we do not deem it necessary to consider or determine this question, for it appears that the plaintiff's services were not gratuitously rendered. He was employed by the city as

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[8] "The right to prescribe regulations looking to the preservation of the public health is one of those sovereign powers that belong to the State. This power can be delegated by the State to any of its subdivisions of government, such as a municipality or a county, and in the use of such subdivisions they are in the exercise of a function purely governmental. As a general rule, a subordinate branch of the government is not liable for injuries sustained by any one, growing out of negligence, misfeasance, or nonfeasance of its officers and agents who are charged with the duty of enforcing laws or ordinances enacted for the public good in the exercise of governmental function and not in the exercise of a private franchise. The exceptions to this general rule are not founded so much upon principle as judicial precedents. The rule itself is based upon a principle as old as English Law,—that "the king can do no wrong." It is upon this idea that the sovereignty of a State protects itself against suits by its subjects; no one having a right to hold it liable for any act of its officers or agents, unless such right is expressly granted by the State itself. Among the precedents which have been established by courts of last resort that are apparently exceptions to this general rule, we have been able to find none that would hold a city liable for any injury that may be sustained as the result of enforcing measures legally enacted for the promotion and preservation of the public health." 1898, Wyatt vs. Rome, 105 Ga. 312, 31 S. E. 188.

[9] Where gangrene sets in because a physician waits for ten days before amputating a crushed foot, the question whether such delay constituted negligence is for the jury, though it is claimed by the physician that he waited in order to see whether the foot could be saved, and that a physician and surgeon will not be held liable for mere errors in judgment. His judgment must be founded upon his intelligence. "He engages to bring to the treatment of his patient care, skill, and knowledge and he should have known what the probable consequence is that would follow from the crushing of the bones and tissues of the foot." 1891, DuBois vs. Becker, 130 N. Y. 325, 29 N. E. 313.

[10] 1853, McCandless vs. McWha, 22 Pa. St. 261-269. 1866, McNevins vs. Lowe, 40 Ill. 209. 1839, Gladwell vs. Steggal, 5 Bingham's New Cases (Eng.), 733, quoted in 1891, Dubois vs. Becker, 130 N. Y. 325, 29 N. E. 313.

one of the physicians to attend and treat the patients that should be sent to the almshouse. The fact that he was paid by the city instead of by the plaintiff did not relieve him from the duty to exercise ordinary care and skill."[11]

The fact that fees are charged some of the patients in a city hospital, where all patients are not charged, does not render the municipality liable for negligence.[12]

"We are of the opinion that . . . the operation of the ambulance is an incident to the maintenance and operation of the hospital itself, and is consequently to be classed with those acts in the performance of which the municipal corporation is exercising a governmental function. It is true that it is alleged in this petition that 'in the maintenance of said Grady Hospital the City of Atlanta charged fees for patients entering therein'; but we cannot construe this allegation to be an affirmative allegation that the city requires of all its patients payments for expense of board and treatment at the Grady Hospital, as would be the case of a private hospital maintained and operated for profit and the pecuniary advantage of those who own and operate it. . . . For the Grady Hospital to charge fees from some of its patients is not at all inconsistent with its character as a public institution and one operated by the municipal corporation in the performance of its governmental duties."[13]

A city was not held liable for the dangerous condition of a flooring in its contagious hospital. The city contended that in maintaining a pesthouse it was performing a governmental duty under the police power of the State, and, therefore, could not be held liable for negligence, causing injuries to persons who were there for treatment and isolation.[14]

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11 1891, Same, 130 N. Y. 325, 29 N. E. 313.

12-13 This was a suit against the city of Atlanta to recover damages for personal injuries alleged to have been sustained by the plaintiff in consequence of being run upon and knocked down by a Grady Hospital ambulance in charge of and under the control of agents, and employes of the city, and it is alleged that plaintiff's injuries were caused by the negligence of the defendant, through its agents and employees in the manner in which the horses pulling the ambulance were driven, to-wit, at an unlawful rate of speed. 1911, Watson vs. Atlanta, 136 Ga. 370, 71 S. E. 664.

14 "John Butler sued the city of Kansas City to recover damages for personal injuries alleged to have been caused by the city's negligence. The city maintains a pesthouse where persons afflicted with smallpox are taken for isolation and treatment. The petition alleged that Butler be-

In Illinois a city has the power to maintain a hospital, either as a charity, in the exercise of its police power, or as a means to promote the general health and welfare. It does not possess the right to maintain a hospital for revenue in its private or proprietary capacity and cannot be made liable for the negligence of persons employed about the hospital, even though the municipal authorities are unlawfully conducting the hospital for revenue.[15]

"The city did not possess the power, in its private or proprietary capacity, to engage in the business of conducting a hospital for revenue. If the municipal authorities have unlawfully entered upon a course of that character, the city cannot be made liable for negligence on their part or on the part of those employed by them in carrying out their purpose. In the performance of its police regulations a city cannot commit a wrong through its officers in such a way as to render it liable for their torts. Where the city is simply exercising its police powers, acts of its officers or agents which are illegal and unlawful are ultra vires, and a citizen has no

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came sick with smallpox and was taken by employees of the city and confined in one of the rooms or wards of the pesthouse, where each morning he was obliged to start a fire, and that blood poisoning resulted from a splinter of the floor which entered his bare foot as he walked from the bed to the stove. The petition alleged that the city was negligent in maintaining the floor of the room in a defective and dangerous condition. 1916, Butler vs. Kansas City, 97 Kans., 239. 155 Pac. 12. 1867, Richmond vs. Long's Administrators, 17 Grattan (Va.) 375, 94 Am. Dec. 461. See also, 1923, City of Shawnee vs. Jeter (Okla.), 221 Pac. 759.

15 "It is apparent, we think, that under the paragraphs a city may conduct a hospital either as a charity or as a means for the promotion of the general health of all its residents or the suppression of disease among all the inhabitants of the municipality, and for no other purposes. If the purposes be charitable, then the city is not liable for the negligent acts of its employees in the institution. If, on the other hand, the purpose is to provide for the general health and welfare, and to provide for suppressing and preventing the spread of contagious or other diseases, the statute authorizing the city to acquire and maintain the hospital must be regarded as an exercise of the police power, which comprehends the making and enforcement of all such laws, ordinances, and regulations as pertain to the comfort, safety, health, convenience, good order and welfare of the public. A city is not liable for the negligent acts of its agents or servants engaged in executing, enforcing or giving effect to its police ordinances and regulations . . . 1907, Tollefson vs. City of Ottawa, 228 Ill. 134, 81 N. E. 823. 1915, Parks vs. Northwestern University, 218 Ill. 381, 75 N. E. 991. 1889, Culver vs. City of Streator, 130 Ill. 238, 22 N. E. 810, quoted in same. See also, 1923, City of Shawnee vs. Roush (Okla.), 233 Pac. 354. 1923, Wallwork vs. City of Nashville, 147 Tenn. 681, 251 S. W. 775.

remedy against the corporation for damages caused by such acts of its officers.''[16]

The operation of an ambulance is incidental to the maintenance and operation of a city hospital, and for this reason is a governmental function. The duties imposed upon the commissioners of public charities and corrections in and for the city and county of New York, by the statutes creating and governing that department are public in their character, and from their performance no especial corporate benefit is derived. Such officers, therefore, are not, nor are the subordinates appointed by them, agents or servants of the municipality for whose negligent acts it is liable.[17]

A hospital, though public, is liable to persons other than patients for the torts of its employees within the line of their employment and a hospital corporation under contract to furnish the city with ambulance service has been held liable for injuries sustained in collision of the ambulance with a taxicab. The State's exemption from liability for torts does not extend to its agents or contractors in such a situation.[18]

The State and its counties, cities, towns, and villages, when engaged as delegates of the State in the discharge of governmental functions are not liable for the torts of agents and contractors unless such liability has been assumed. Whereas, the agents or contractors of the State or its civil division are liable for their torts whether they act in person or by subagents or servants.[19]

In order to relieve himself from the regulations of a quarantine established by city health authorities in the district where he resided, the plaintiff submitted to vaccination by a physician employed by the board of health. The operation

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16 1907, Tollefson vs. City of Ottawa, 228 Ill. 134, 81 N. E. 823.

17 Accordingly the city corporation was not liable for the negligence of an employee of the commissioners in driving an ambulance wagon belonging to the city which struck and caused the death of plaintiff's intestate. 1875, Maxmillian vs. Mayor of N. Y., 62 N. Y. 160.

18 1920, Murtha vs. N. Y. Homeopathic Hospital, 228 N. Y. 183, 126 N. E. 722.

19 A city which is engaged in flushing its streets, in the interest of its inhabitants and of the safety of the general public, and making no profit for such service, is exercising a governmental function. Hence a person receiving personal injuries from the negligence of its employees, or from defective hose used while flushing the streets, has no action against the city. 1910, Kippes vs. Louisville, 140 Ky. 423, 131 S. W. 184.

was negligently performed and in consequence a serious illness resulted, causing amputation of one of plaintiff's limbs. The city was not held liable in the opinion of the Court.[20]

A city is liable for injury resulting from the neglect of a duty imposed on it by statute, where the duty is absolute or imperative, but it is not liable for damages, either for the non-exercise of, or the manner in which, in good faith, it exercises discretionary powers of a public or legislative character.

A city is not liable for injuries which are caused by the neglect, incompetence, or wrongful acts of its duly appointed officers in enforcing sanitary regulations to prevent the spread of contagious diseases, because the act of such officer is the exercise of a governmental or legislative function.[1] But where a city, which is authorized by its charter to purchase property beyond its limits for a pesthouse, seizes property for that purpose without the consent of the owner, it is liable in damages for the trespass.[2]

§ 133. **Liability of a City in Removing Nuisances.** Where the city abates a nuisance, which is shown in fact to be a nuisance, no liability for the destruction of the property arises against the city: Where city officials destroy private property in the interests of public health and to prevent the spread of contagion, no liability arises against the city.[3]

"The proof shows that the property destroyed could not be disinfected and that the only safe way to prevent the spread of the disease was to burn the articles destroyed, and this was done in accordance with the recommendation of the State Board of Health. The city officials in disinfecting or burning the property of the appellee were not acting in the interest of the city in its private or administrative capacity. It is well settled that a city is not liable for the acts of its officers in attempting to enforce police regulations."

But if a city abates a nuisance which is not in fact so, it is liable for damages.

The power conferred in general terms on municipal cor-

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20 1915, Howard vs. Philadelphia, 250 Pa. 184, 95 Atl. 388.

1 A Superintendent of the Portland City Home and Hospital has been awarded compensation for injury while acting in the course of his work. 1922, Pennell vs. City of Portland (Me.), 125 Atl. 143.

2 1884, Dooley vs. Kansas City, 82 Mo. 444, 52 Am. Rep. 380.

3 1908, Perry vs. Oregon, 139 Ill. App. 607.

porations to prevent and abate nuisances cannot be taken to authorize the condemnation of that as a nuisance which, in its nature, situation, or use, is not such in fact. And if the city, acting under the general power, abates as a nuisance that which is not such in fact, it does so at its peril, and is liable for the damage done, if it turns out in proof that it has made a mistake.[4]

The municipal authorities of a city have no right to destroy the private property of a citizen for the public good without compensating him for the loss thus occasioned, unless the property is itself a nuisance endangering the public health or safety. In that event it may be destroyed by such municipal authorities, without paying the owner its value, if the charter of the city confers upon them the power to abate such nuisances; but even then, unless the property is first condemned as a nuisance by appropriate proceedings, its destruction will be at the peril of the municipal authorities; and, when sued for its value, the burden is on them of showing that it was in fact a nuisance, and that its destruction was really necessary to the public health or safety. In cases of emergency the destruction may properly be ordered without a preliminary condemnation, but the municipal authorities will in that event carry the same burden.

In an action to recover for the value of certain property destroyed by sanitary inspectors the evidence showed conclusively and beyond question that the property destroyed was in fact a nuisance, endangering the public health, and that the mayor and aldermen of Savannah had due authority to abate it. Consequently, the destruction of the property was lawful, and the owner was not entitled to recover its value from the city.[5]

In Detroit a mandamus against the city was prayed to compel it to allow a bill for certain losses for smallpox infection. The bill was for amount due for loss, and for compensation by reason of the infection of premises.[6] The Supreme Court said: "We are satisfied that the Court below was correct. The smallpox broke out through no fault of the health board. As soon as the first case in this house was

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4 1893, Orlando vs. Pragg, 31 Fla. 111, 12 So. 368.

5 1895, Savannah vs. Mulligan, 95 Ga. 323, 22 S. E. 621.

6 1898, Webb vs. Detroit, 116 Mich. 516, 74 N. W. 734.

reported the patient was removed by the health board to the hospital, and the house quarantined. It was quarantined nearly two weeks when the second case broke out. This patient was not removed to the hospital, but the house was continued to be quarantined by the board. During all this time it was rented to Mrs. Brown, who continued to live there, and who, the relator testified, paid the rent until the middle of June, and then, because of the smallpox, was not able to pay more rent. But we think no claim can be made for the rent of the house under the circumstances here shown. . . . The house was infected before it was quarantined. The proofs show that the goods, after being disinfected, were destroyed by the relator and under her directions, and not by the respondent. She destroyed them, not because they were injured by disinfection, but because they had been infected with disease. . . . The board did not make a hospital of the relator's house, or make any further use of her goods than was necessary to the proper care of the patients, who were found suffering from the disease. It was the duty of the respondent to quarantine the relator's house, and, for the protection of the public, to disinfect the relator and the property. The municipality is not liable for injury to property resulting from the performance of his duty by its officers."

The Legislature may authorize the destruction of unhealthy houses as nuisances.[7]

If the officers employed inflict an injury, the corporation is not liable, for the preservation of the public health is a purely governmental function. In a Texas case the Court says that "the right of a city council, acting under legislative authority, to enact and enforce an ordinance providing for the removal from the city limits of persons afflicted with contagious diseases, is not to be questioned. If the continuance of such persons in the city is incompatible with the safety of the inhabitants, the city authorities can remove them, but in doing so, they and those to whom she intrusts this duty, are bound to make every reasonable provision for the safety of the diseased persons."[8]

"The statutes provide that actual damages for injuries

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[7] 1885, Thielan vs. Porter, 14 Lea. (Tenn.) 622, 52 Am. Rep. 173.

[8] 1885, Aaron vs. Broiles, 64 Tex. 316.

causing death may be recovered when death was caused by the wrongful act, negligence, unskilfulness or default of another, and that when it is caused by the willful act or omission or gross negligence of the defendant, exemplary damages also can be recovered. If the city authorities cause the removal of a person afflicted with a contagious disease, and in doing so fail to exercise the care and precaution the circumstances demand, and death results, they are responsible, even though acting under a city ordinance."[9]

"There is nothing judicial in the act of removing diseased persons from the city limits, and the question is, whether there was a wrong done in the manner of effecting the removal."[9]

§ 134. **Liability of State and Municipal Corporations for Maintaining a Nuisance.** In the case of Barry vs. Smith, a smallpox hospital was located on land hired therefor adjoining plaintiff's premises, and without any legal proceedings, or permission from him, his land was used by ambulances taking the patients to and bodies from the hospital. A rope was put around his driveway, bringing it within the hospital grounds, and he and his tenants were excluded from using it. The Court held that the defendants, who were members of the board of health, had no right to take the plaintiff's land, and were liable therefor, if it was done by them or by persons in their presence and under their direction.

The members of the board of health were required, on the breaking out of a disease dangerous to public health, to provide such a hospital. "They cannot be held liable for any negligence or mistake in the exercise of their discretion in locating the hospital, and where the members of the board of health who have control of a smallpox hospital are personally negligent in the maintenance of it, and in consequence thereof, or of acts of another in their presence, which are thus their acts, the hospital becomes a nuisance to adjoining property, they are liable therefor, provided their negligence is a misfeasance, as distinguished from a nonfeasance."[10]

In Bryant vs. St. Paul the Court held that where a board of health was constituted a separate body by the charter of a city, and authorized generally to make and enforce sanitary

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[9] 1885, Same, 64 Texas 316.

[10] 1906, Barry vs. Smith, 191 Mass. 78, 77 N. E. 1099.

regulations for the care and preservation of health, the city was not liable for the acts or negligence of such board in the discharge of its duties, the same being public and governmental and not corporate in their character. In that case the plaintiff sought to charge the defendant for misfeasance or negligence of the board of health or its agents in leaving a vault upon private premises exposed and open after removing its contents, in consequence of which plaintiff, without fault on her part, fell into the vault and was injured.[11]

In a Texas case the Supreme Court of that State said:[12] "In reference to the liability of municipal corporations for creating or failing to remove a nuisance, this distinction is to be observed. If the nuisance grows out of acts done exclusively in the interest of the public, such as the improvement of the sanitary condition of the city, then it would be liable only for a careless or negligent execution of the duty. But if the acts out of which the nuisance originated or is continued were done for the private advantage or emolument of the municipal corporation, then, irrespective of the question of negligence, it would be liable for the injuries resulting therefrom."

A city is not liable for failing to disinfect and quarantine its hospital property according to a Kentucky case. Under Const. Sec. 242 of that State providing that municipal and other corporations and individuals invested with the privilege of taking private property for public use shall make just compensation for the property injured or destroyed by them, "a city is liable for the injury to owners of adjoining property from the location of a pesthouse. In the absence of personal injury, the measure of damages, when the establishment of the pesthouse is permanent, is the impairment of the market value of the property."[13]

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[11] 1885, 33 Minn. 289, 23 N. W. 220.

[12] 1885, Fort Worth vs. Crawford, 64 Tex. 202, 53 Am. Rep. 753.

[13] 1901, Paducah vs. Allen, 111 Ky. 361, 63 S. W. 981.

The police regulations of a city are made and enforced in the public interest, and a city is not liable for the acts of its officers in attempting to enforce them, and, the establishment and maintenance of a city calaboose, which falls within the proper exercise of the city's police power. A city is not liable for the wrongful or negligent acts of its police officers or the board of health in managing a calaboose or in detaining therein persons afflicted with smallpox, resulting in persons working or residing

Where a city or other municipality erects and maintains a public institution, which, by reason of its nature, endangers the lives or health of the occupants of adjacent premises, as by subjecting them to contagious or infectious diseases, it is not only a nuisance, but it is such an invasion of the property rights of such adjacent holder as amounts both to an injury and a taking of property; . . . for this the city must make compensation."

A county may be liable for establishing a hospital for contagious diseases in certain places as is shown by the following cases:

An action was brought by Catherine Haag against the board of commissioners of Vanderburgh County, for keeping and maintaining a nuisance, to the danger of the plaintiff.[14] A statute provided that "whatever is injurious to health, or indecent, or offensive to the senses, or an obstruction to the use of property, so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance and the subject of an action.

"It would seem to be beyond question, that the keeping and maintaining of a pesthouse, and the matters connected therewith, as alleged in the several paragraphs of the complaint—constituted a nuisance, of which the appellant had a right, legally, to complain against someone. As to that, there is no contest here between the parties, and we need not make any further citation of authorities to sustain that view of the case.

"In our State, the board of commissioners of the several counties are declared to be bodies corporate and politic, and as such, may sue and be sued by their corporate name, and have all other duties, rights and powers incident to corporations, not inconsistent with the provisions of law creating them and prescribing their several duties. . . .

"It is also a well-recognized rule, that municipal corporations are liable for torts in certain classes of cases, including nuisances, in the same manner as are natural persons. . . . It is only where there has been some abuse of the authority

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nearby contracting the disease. 1907, Evans vs. Kankakee, 231 Ill. 223, 83 N. E. 223.

[14] 1878, Haag vs. Vanderburgh County, 60 Ind. 511, 28 Am. Rep. 654.

conferred on the corporation, that an action can be sustained. . . .

"The board of county commissioners, is in legal contemplation, the county, and in legal proceedings the county is known only through its board of commissioners, which has the care, supervision, management and control of the property of the county.[15]

"The charge in the several paragraphs of the complaint under consideration is, in legal effect, therefore, that the appellee committed the grievances complained of on certain lands belonging to Vanderburgh County, in the possession and under the control of the appellee, by misuse and mismanagement of such lands.[16]

"Addison, **supra,** says: 'A municipal corporation has no more right to maintain a nuisance than an individual would have, and for a nuisance maintained upon its property, the same liability attaches against a city, as to an individual.'

"We regard this rule laid down as correct in principle, and as equally applicable to a county."

In Kentucky a pesthouse was established within one mile of the city limits, contrary to statutory provisions, and the disease of smallpox was contracted therefrom by a near-by family. Just as a member of the family was coming down, a friend visited them overnight, and thereby contracted the disease. The Court held, that the injuries thereby sustained by the visitor were the natural and proximate result of the violation of the statute.

The visitor contracted smallpox by sleeping with a child just breaking out with the disease. She was ignorant that smallpox was in a near-by pesthouse, and on making inquiry as to the nature of the eruption on the child, was told by the mother that she supposed the child had chicken pox. It was held further that the visitor was not guilty of contributory negligence, so as to defeat recovery from the town, based on the illegal maintenance of the pesthouse.[17]

The fact that a public pesthouse was not a nuisance, when erected by the city, because of its secluded location, does not prevent persons who subsequently located in the

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15-16 1878, Same, 60 Ind. 511, 28 Am. Rep. 654.

17 1902, Henderson vs. O'Halloran, 114 Ky. 186, 70 S. W. 662.

vicinity thereof from obtaining redress, on the ground that they have come to the nuisance, where such building has not been maintained long enough to give the city a prescriptive right.[18]

"The placing of a woman afflicted with leprosy in the private home of a laborer (not an officer of the city) did not amount to an establishment of a hospital for the isolation and treatment of contagious diseases, as permitted by statute. The power to erect and maintain hospitals and pesthouses does not justify the making of a contract with a laborer for the keeping of one afflicted with leprosy at his home located on city land in a settled district, since the act has a tendency to extend the disease instead of protecting the community."[19] In the opinion of the Court: "The delegation of a power to do an act, while conferring full authority to perform the act itself, does not, therefore, without more essentially and without exception carry the right to so do it as to inflict loss or injury upon an innocent individual. As thus understood, the power of the municipality to erect and maintain hospitals and pesthouses may be exerted and applied precisely as the same power, if not delegated, could have been availed of by the State. Acts done under such delegated authority, which without that authority would in themselves be public nuisances, furnish no ground for civil or criminal proceedings at the instance of the State; for the authority to do the acts makes them, when done, perfectly lawful as respects the public, and, being lawful, there is no superior public right which they invade or violate. These are what have been sometimes described as 'legalized nuisances' (Wood Nuis. C. 23), since they are strictly necessary and probable results of legislative authorization. They ultimately rest for their sanction upon the paramount power of the Legislature, and the importance of the public benefit and convenience involved in their continuance as affecting the greatest good to the greatest number.[20] But, however, free from interference by the public acts of this character may be when authorized to be done by a municipality under competent and sufficient legislative

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18-19 1898, City of Baltimore vs. Fairfield Improvement Co., 87 Md. 352, 39 Atl. 1081.

20 1878, Northwestern Fertilizing Co. vs. . . . Hyde Park, 97 U. S. 659.

grant, the right of an individual to complain of the special injury sustained by him as a consequence of their being done is, ordinarily, in no way impaired or affected. . . . That the State may, in the exercise of the police power, and for the preservation of public health, authorize the summary destruction of private property with the germs of disease is thoroughly settled. . . . But there is a broad distinction between a summary destruction of an offending thing and a direct injury to unoffending property; that is, property itself not liable to destruction because not dangerous to the public health or safety. The immediate and imminent danger to life or health justify, under the police power, the one; while the other is left to be redressed in the due process of the law. However broad may be the powers of a municipality to erect and maintain hospitals and pesthouses for the segregation and treatment of contagious and infectious diseases, and however necessary their exercise may be, they must, generally speaking, be exercised and put into operation subject to the no less well-defined right of the individual to possess and enjoy his unoffending property without the molestation of a nuisance.[1]

"Whatever immunity a municipality may have in exercising a public, as contradistinguished from a strictly corporate, power, it does not result from some collateral act or from the negligent doing of a permissible act. The infliction of an injury upon another is neither the natural nor the necessary result of an exercise of the power to build a hospital; but if injury does ensue, it would result from the collateral circumstance that the place selected was not the appropriate site, or from the negligent method of doing what would otherwise be a lawful act.[1]

"The evidence shows, as we have indicated, that the health authorities of the city propose to place this woman in the charge of a laborer and his wife. A contract has been made with them, and under it this laborer and his wife agree to care for the patient. They are unskilled people. They possess no authority to restrain the woman from wandering away, and they have no legal right to detain her against her will. They are not officers of the city, nor clothed with any

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1 1898, Same, 87 Md. 352, 39 Atl. 1081.

of the powers of the board of health. They are simply employed by the city to care for this woman on the city's property where no health officer or city official is stationed. The mere fact that the place of her proposed detention belongs to the city adds nothing to the power of the laborer to hold her; and most certainly these facts do not amount to the establishment of a hospital under the power which the city possesses. The contract is, on its face, unreasonable. Its tendency is to cause a dissemination of the disease and not to protect the community, and for this, if for no other reason, the injunction ought to be made perpetual.''[1a]

In the following series of cases a state institution was held liable for maintaining a nuisance and execution was permitted.

In an action against the Central Kentucky Lunatic Asylum,[2] which is created by statute a body politic, the petition states that the defendant has wrongfully built two dams across a small water course, adjacent to and above land occupied by Mary Herr and others, making two artificial lakes or ponds, ''whereby the natural flow of the water has been greatly diminished; that defendant dumps and causes to be carried through a sewer from said buildings, into the creek, all slops, offal, and refuse matter of every kind, a large part—though because of feeble flow of the creek, not all of which passes through and upon the premises of plaintiff, whereby water of the creek, formerly used for watering their animals and other farming purposes, has become unfit for any purpose, and the air rendered so noxious and offensive as to make their homes unhealthy and untenable. Wherefore they ask an injunction against defendants maintaining the alleged nuisance, and abatement of it, including the removal of the two dams. But to the petition a general demurrer was sustained, upon the principal ground, . . . that defendant corporation is but an arm of the State, and consequently cannot be sued without express legislative authority. In terms of the statute creating defendant a corporation, it is not only given power to sue, but made, without qualification, liable to be sued. And, if an action for the cause stated in

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[1a] 1898, Same, 87 Md. 352, 39 Atl. 1081.

[2] 1895, Herr. vs. Central Kentucky Lunatic Asylum, 97 Ky. 458, 30 S. W. 971.

petition of plaintiffs cannot be maintained against it, we are at loss to know what character of default or wrong it could be sued for.[3]

"But it seems to us, independent of statutory liability, defendant is answerable for the wrong and injury complained of, in the same manner and to the same extent as one or more natural persons would be occupying the same attitude, which is that of agent or officer of the State. . . . It cannot be that in such case a person injured would be wholly without remedy merely because the wrongdoers are agents or officers holding and controlling property of the State. . . . Here remedy sought is injunction against continuance of a nuisance, and, as a necessary consequence, abatement of it. And as the alleged wrong is such as to cause permanent mischief and continuous grievance, which cannot be, otherwise than by injunction, repaired or prevented, and it is moreover alleged that plaintiffs have and will continue to suffer injury to both their health and property unless the Court grants the relief, a prima facie cause of action is stated in their petition, and the chancellor erred in sustaining the demurrer. Judgment is reversed, and cause remanded for further proceedings consistent with this opinion."

A continuation of the same case is involved later in another case.[4] "It appears from this record that the appellant wrongfully constructed and maintained upon its premises two separate dams across Goose Creek; that said two dams formed two separate artificial lakes on the premises of the appellant, and that the maintenance of said lakes greatly diminishes the flow of said stream so that it is very sluggish. It further appears that the appellee built upon its land a sewer from said asylum which unites into said stream below said lakes, and that through said sewer said defendant discharges into Goose Creek large quantities of . . . refuse matter, matter of every kind, . . . and as a result has greatly damaged appellant's farm, causing sickness and death in his family, and that he sued appellant and recovered judgment for $5,000 in damages.[4]

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[3] 1895, Same, 97 Ky. 458, 30 S. W. 971.

[4] 1898, Hauns vs. Central Kentucky Asylum, 103 Ky. 562, 45 S. W. 890.

"It further appears that appellant on the third day of June, 1897, caused an execution to issue upon said judgment for the amount thereof, including interest and costs, directed to the sheriff of Jefferson County, which execution was by the sheriff, July 6, 1897, levied upon the following described property of the Central Kentucky Lunatic Asylum, to-wit: 'Three head horses, etc.'

"The mere fact that the process of law may interfere with some of the functions of the State government is no reason why their enforcement cannot be had; and the property of a corporation performing a function of government in caring for insane persons may be properly sold under execution if the sale thereof would not render it wholly unable to properly care for the inmates; and the Court judicially knows that 'brick in kilns,' 'stock and fat hogs,' 'cattle,' and 'wheat in the shock,' is such property as may be sold upon execution without seriously interfering with the proper care of such inmates."[5]

In the last of the series of Kentucky cases the Court said that, where a state asylum for the insane was created a corporation with power to sue and be sued, a fund saved in the ordinary management of the asylum and appropriated for the construction and equipment of an industrial and amusement hall was not indispensable to the support of the inmates of the asylum and is subject to attachment for the debts of the corporation.[6]

The Court refused to quash the execution, but quashed the levy. From that ruling appellee appealed to this Court, which reversed the judgment holding that the levy was properly made, and that whether the property levied upon was necessary for the support and maintenance of the patients at the asylum was a question of fact to be determined by the Court. "In this case there is a fund in bank which the commissioners have dedicated to the building of a hall; but as

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5 1898, Same, 103 Ky. 562, 45 S. W. 890.

6 "On June 17, 1896, appellee, Valentine Hauns, recovered a judgment against appellant for $5,000. Execution was issued upon this judgment, and levied upon a tract of land owned by the asylum, and some horses, mules, wagons, brick, hogs, cows, and other personal property belonging to it. Appellant entered a motion in the Circuit Court to quash the execution and levy. The Court refused to quash the execution and levy. 1901, Central Kentucky Asylum vs. Hauns, 23 Ky. Law Rep. 1016, 64 S. W. 643.

the money has not been expended, and the title to the fund is in appellant, it is none the less liable for its debts because they have determined what use they will make of it. On the question of the necessity of the hall to the institution the opinion on the former appeal seems conclusive. It is certainly not one of those indispensable things excepted out of the operation of that opinion. Nor is the action of the commissioners final; for, while they cannot be controlled by mandamus in the discharge of their discretionary duties, the property in their hands which is liable to execution or attachment may be subjected to the process of the courts just like that of any other debtor. To hold otherwise would be to say, in substance, that the property was not liable to levy.''[7]

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[7] 1901, Same, 23 Ky. Law Rep. 1016, 64 S. W. 643.

CHAPTER V

THE TAXATION OF HOSPITALS

§ 140. **Kinds of Taxes.** The power to tax has been defined as the power in the State to enforce proportional contributions from persons and property for the support of the government and for all public need. There are various kinds of taxes, including property taxes, income, inheritance, and license taxes. We are concerned first with property taxes, which are taxes computed upon a valuation of property. Taxes on property include general taxes on all property and special assessments on property benefited by a local improvement and laid for the purposes of defraying the cost of the improvement.

§ 141. **Grounds for Exemption.** No tax can be levied except for the purpose of raising money which is to be expended for public purposes or use and, to justify the exercise of the power of taxation, the expenditure which the tax is intended to meet, must be for some public service or object which concerns the public welfare. The power to raise money for the purpose of erecting buildings in which to carry on governmental activities is not questioned.[1] The care of the sick, the erection, maintenance, and management of hospitals is an acknowledged governmental obligation. A public tuberculosis hospital is considered to be a governmental activity, just as ". . . roads, bridges, the care of paupers, of the insane, of prisoners, official salaries, the care of public buildings, etc., have usually been considered public purposes."[2]

When charitable institutions are maintained as private corporations through endowments, or institutions have been provided with the understanding that they will be maintained for public purposes, the question arises as to whether or not

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1 26 R. C. L. 48, Sec. 32.

2 1913, Board of Commissioners vs. Peter, 253 Mo. 520, 161 S. W. 1155; also, 1908, Leavitt vs. Morris, 105 Minn. 170, 117 N. W. 393.

the State instead of duplicating the established institutions could not assist and further its work with public funds. This assistance may take the form of certain exemptions from required obligations or actual subsidies such as grants in aid. The tax exemption from certain obligations such as property, inheritance, corporation, or other taxes is a frequent form of aid while the grant of money is less common. It is axiomatic that public funds cannot be loaned or given to private individuals and some of the State constitutions prohibit such grants to any institution not maintained by the State. others to an institution controlled by a religious sect. However, several states do grant public aid to hospitals, while others authorize counties and municipalities to do so, and still others pay for specific services rendered by such hospital.[3]

§ 142. **Exemption Determined by Statutes.** The primary form of taxation in almost all of the states is the direct property tax levied at a uniform rate upon all the property real and personal within each city, town, or other taxing district. Under the statutes those classes not expressly exempted by law are subject to taxation so that the matter of exemption may be largely a matter of statutory interpretation or construction. The actual constitutional and statutory provisions for the exemption from taxation of hospitals or charitable institutions are treated in the following chapter.

All exemptions from taxation are to be strictly construed, and in order to be operative a claimed exemption must be clear and unequivocal.[4] The claim for exemption must be made out by proof, and the right to exemption can be established only by strict proof of all the facts necessary to authorize it.[5]

"In the case of statutes or other provisions granting tax exemptions, the courts will strictly construe the intent of

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[3] See p. 279, Ch. VII, on Public Aid to Hospitals.

[4] "The burden is on a tax payer to show clearly and unequivocally that his property is within the terms of an exemption. Doubt upon this point operates against the party making the claim." 1878, Tax Court vs. St. Peter's Academy, 50 Md. 343. Also, 1914, Boston Lodge vs. City of Boston, 217 Mass. 176, 104 N. E. 453.

[5] 1904, In re Landis Estate, 66 N. J. Eq. 291, 56 Atl. 1039.

An exemption from taxation will not be implied but the express provision in the charter or law must be shown. However, even where it has been clearly granted, the grant is not of necessity a contract. 26 R. C. L. 304, Sec. 267.

the Legislature. . . . A grant of exemption being in derogation of the sovereign authority and of common right, must invariably be construed most strictly against the grantee and can never be permitted to extend either in scope or duration beyond what the terms of the concession clearly require."[6]

Under the constitutional provision requiring all taxes to be imposed equally upon the property of persons and corporations, exemptions from such burdens are to be construed strictly, and not extended by judicial construction, to embrace other property that is not plainly expressed in the law.[7]

§ 143. **Exemption Not to be Arbitrary.** Exemption from taxation for valid public purposes is permitted and may be one of two varieties. If all the revenues of a given community were to be raised by a tax on real estate, the personal property could be said to be exempt from taxation but in its narrower sense an exemption from taxation is in reality a grant of immunity to certain specified groups or classes. In the absence of constitutional restrictions, the power to tax implies the power to prescribe what property is exempt and the Legislature may exempt such property from taxation as in its opinion the public policy of the State requires.[8] Mere arbitrary exemptions are not permitted and the legislative power to exempt is usually limited.

§ 144. **Special Taxes Not Included in General Exemption.** An exemption from taxation applies first of all to the annual general property tax and does not include, unless specified, exemptions from other taxes such as the exemption from license or inheritance taxes, or exemptions from assessments for local improvements.

§ 145. **Provisions for Exemption.** Most of the states exempt the property of charitable, benevolent, religious, and educational institutions. This may be done by an express constitutional provision, by a section of the general taxing act, by special act, or by charter provision. When, however, the constitution prohibits the granting of special privileges, exemption cannot be granted by special act.[7] Several state

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[6] 1907, Sisters of Charity vs. Corey, 73 N. J. L. 699, 65 Atl. 500.

[7] 1877, People vs. Western Seamen's Friends Society, 87 Ill. 246.

[8] 26 R. C. L., p. 296, Sec. 261.

constitutions expressly prohibit these exemptions by special act.

§ 146. **Incorporation May be Prerequisite.** Although the phraseology of a statute must be strictly construed, it has been held that a statute which exempts the property of religious, charitable, and educational associations may include the corporations of such character as well as unincorporated societies. Some states, however, limit the exemption to incorporated institutions.[8]

§ 147. **Other Requirements for Exemption.** It is sometimes provided that property used for hospital purposes cannot be exempted from taxation unless it is used for charitable purposes as in West Virginia.[9]

Property to be exempt, therefore, must not only be actually and exclusively used for charitable purposes, but it must also be the property of an institution of public charity. "It would be a contradiction in terms to say that a corporation organized for gain and pecuniary profit is an institution of public charity. It follows of necessity that the law requires that the property to be exempt must belong to, and stand in the name of, an institution organized for public charity, as well as that the property shall be used actually and exclusively for such charitable purposes. The right to enjoy

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8 26 R. C. L. 316, Sec. 277.

9 The constitution of the State required all property to be taxed except "property used for educational, literary, scientific, religious or charitable purposes." (Art. 10, Sec. 1.) "Whether or not property may be exempted from taxation under this section depends on the use to which it is applied, except that "cemeteries and public property may be exempted by law without regard to their use; they are specifically named, and may be exempted by law. The Legislature in compliance with this provision of the Constitution has specified the property exempted. Chapter 29, Sec. 57, Code. That statute, among other things, exempts from taxation property belonging to "any hospital not held or leased out for profit." In determining the character of this hospital, it is not necessary now to decide what effect shall be given to the words "not held or leased out for profit"; as the character of the hospital in this case will be determined by other controlling facts. It will be observed that by this statute the property of all hospitals is not exempt from taxation. Only the property of a certain specified class of hospital is exempt. The evident intent of the Legislature is to place the property of certain hospitals in the class of property used for charitable purposes—It is the use to which the property is to be applied that determines whether or not it may be exempted from taxation." 1916, Reynolds Memorial Hospital vs. Marshall County Court, 78 W. Va. 685, 90 S. E. 238.

exemption from taxation can be established only by strict proof of the existence of all facts necessary to authorize the exemption."[10]

A hospital which has been established for the care and treatment of the sick, may or may not be exempt from taxation, depending on the organization and management of the business. A hospital which is conducted as a business enterprise, the profits of which are or may be divided among its proprietors, is not exempt even when the primary purpose is the care and treatment of the sick, and when charity work is done.[11]

A comparatively recent case arose in the Supreme Court of Mississippi over the privately owned Vicksburg Sanitarium, in which the Court said: "The entire property of this corporation, both real and personal, is appropriated to and occupied and used as a hospital. From time to time, it treats charity patients, but care of such patients is not its principal purpose; its primary purpose is to care for and treat patients for pay. Its entire property is devoted to the care of the sick and to those who require medical or surgical treatment. . . ."[12] It was held that the Legislature intended to

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10 1909, People vs. Ravenswood Hospital, 238 Ill. 137, 87 N. E. 305.

11 The Ft. Sanders hospital was incorporated as a profit making concern with about seven or eight charity cases as a rule, the remaining group of patients being charged a substantial price for their care. The Court points out that although the defendant "does some charitable work, some educational work, and some scientific work, we do not think it can be regarded as a charitable institution, an educational institution, or a scientific institution within the sense of the Constitution, nor is its property devoted exclusively to any of these purposes. The great bulk of its business is the operation of a hospital where patients pay for the services rendered them. That portion of the property devoted to charitable, scientific, and educational purposes is not separable from the remainder . . . Manifestly, the educational and charitable work done at this hospital is incidental, and we do not think it could be properly called a scientific institution. While doubtless these doctors pursue their calling in a scientific or skilful manner, still they do not pursue it so much in the interest of science as for their own livelihood." 1924, City of Knoxville vs. Ft. Sanders Hospital, 257 S. W. 408.

12 1918, Mayor and Alderman of City of Vicksburg vs. Vicksburg Sanitarium, 117 Miss. 709, 78 So. 702.

In the case of Episcopal Academy vs. Taylor the Supreme Court of Pennsylvania declared that a religious denominational school which did not limit the admission of patrons was exempt from taxation as a purely public charity. 1892, 150 Pa. 574, 25 Atl. 55.

exempt only charitable hospitals and consequently the institution organized for profit was not exempt.

"A hospital erected and equipped by public or private charity might be conducted with such skill and economy as to become self-sustaining, but it would not thereby lose its character as a purely public charity. A private hospital, built and conducted as a business enterprise, stands upon widely different ground. There is no trust involved, no charitable use impressed upon such an establishment. Nothing has been done or given by the proprietor in relief of the public, but he holds the title to his own property, and conducts the business for his own profit. If it proves unprofitable, he may close it up, or devote his plant to such other purposes as he will."[13]

A hospital is not exempt as a charitable hospital where the articles of incorporation do not specify the intent to do either hospital or infirmary work, although the real estate is primarily devoted to the maintenance of a hospital for consumptives.[14]

A coöperative association to provide medical and hospital care is not exempt from taxation. "The members of the corporation here involved are interested therein substantially in the same way as the members of a voluntary association or partnership formed for the same object are interested. In each case the arrangement partakes of the nature of a contract

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[13] 1892, Same, 150 Pa. 574, 25 Atl. 55.

[14] This case was not carried to the Court of Appeals but is quite generally quoted to illustrate the importance of a declaration of the purpose of conducting hospital or infirmary work in the articles of incorporation.

An association was organized for "benevolent, charitable, literary, scientific, missionary, and Sunday school purposes, and for mutual improvements in religious and literary knowledge," the principal business and objects of the association being "the keeping and maintaining convent and schools, teaching schools, keeping boarding schools, teaching Sunday schools, giving religious and literary instructions, visiting the sick, assisting those who need assistance, instructing and aiding poor people, teaching girls useful branches of industry and giving general instructions to females, and for no other or different purpose." This did not authorize the Sisters to conduct a hospital for consumptives even though it was free to all denominations. The Court held that the relator was "not organized exclusively for the purpose of maintaining the hospital which it does maintain, or at all for such purposes, and therefore does not come within the exemption provided by law for such institutions."

1901, People ex rel. Sisters of Mercy of Diocese of Ogdensburg vs. Nowles, 34 Misc. Rep. 501, 70 N. Y. S. 277.

whereby, for the dues and fees agreed upon and paid, the members receive the medical treatment to be given by the association at the expense of the common fund thus accumulated. Such a society, whether incorporated or not, is not doing charitable work, but is merely rendering the consideration agreed upon in the contract between it and its members."[15]

The reception of cases bearing their own expenses does not change the legal status of a charitable hospital since their payments are in the nature of a contribution to the services. Some institutions organized as charitable hospitals accumulate funds and devote a large part of their attention to those who need care but who can pay for it.

The Massachusetts statute relating to hospitals for the insane has provided that exemption is not possible "unless at least one-fourth of all property so occupied wholly or partly, on the basis of valuation thereof, and one-fourth of the income of all trust and other funds and property held for the benefit of such asylum, hospital, or institution and not actually occupied by it for such purposes, be used and expended entirely for the treatment, board, lodging, or other direct benefit of indigent insane persons, or indigent persons in need of treatment for mental diseases, as resident patients, without

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15 1920, Société Française de Bienfaisance Mutelle de Los Angeles vs. Flint, 182 Cal. 159, 187 Pac. 428. (**In re** Dol's Estate.)

This follows the same general theory outlined in the case of, 1903, Brown vs. La Societe, 138 Cal. 475, 71 Pac. 516, which is discussed more fully in the chapter dealing with liability of hospitals. That was an action against the defendant society to recover damages for the alleged unskilful conduct of the defendant's surgeon in setting the plaintiff's leg. In determining the liability of the defendant, it was necessary to determine the charitable character of the corporation. The by-laws of the society were examined, being virtually the same in the two cases, and in that case (Brown) the Court decided that it was "merely an association for mutual profit or benefit, similar in its essential nature to other societies formed for such purposes."

The same rule concerning institutions for profit seems to be that of England. "In this case the question raised is whether the Barnswood House Institution was liable to pay inhabited house duty, or whether it comes within exemption No. 4 of 48 Geo. 3, C. 55, which exempts any hospital charity, school, or house provided for the reception or relief of poor persons. We think that this exemption, which specifies hospitals along with charity schools and poorhouses, must be construed in the same manner as we have construed the exemption in S. 61 of 5 and 6 Vic., C. 55, and that it does not include the case of a hospital not maintained by charity, but carried on, and carried on at a profit, by funds derived from patients who pay for their treatment." 1888, Needham vs. Bowers, 21 Q. B. D. 436. Quoted in Ann. Cas. 1917. B. 281.

any charge therefor to such persons either directly or indirectly.'' The meaning and constitutionality of this section have been brought before the courts for interpretation and construction.[16]

This same statute was construed as to its application to a hospital treating nervous diseases. The Court said: ''The complainant is a charitable corporation. . . . It is not contended that the complainant treats or cares for insane persons or uses any part of its property for an insane hospital or asylum. Persons suffering from mental derangement are not admitted to it. The only point now to be considered is whether its real estate is occupied 'wholly or partly—for the treatment of nervous diseases' or for the 'treatment of mental diseases' within the meaning of the statute. The context does not confine these words to the treatment of such persons as ordinarily are found in insane asylums. The natural import of the words is to include those not rightly described within the classification of inmates of insane hospitals and kindred institutions. Persons suffering from mental or nervous disorders or weaknesses falling short of insanity, and not necessarily finding their appropriate treatment in institutions where the insane are confined are aptly described by the words of the statute.[17] It is a matter of common knowledge that there are many persons who suffer from nervous prostration and mental exhaustion. It seems manifest that the phrase of the statute interpreted according to its ordinary sense comprehends such people. . . . Treatment of such persons by the complainant brings it within the descriptive words of the statute.''[18]

The charging of fees to those who can afford to pay is universally held not to change the charitable nature of a hospital so as to make it lose its exemption from taxation. A hospital organized by some members of a church parish, ''having the general purpose to provide for and nurse sick and destitute persons, to which all persons in need of treatment were freely admitted whether they could pay or not,

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16 1919, Massachusetts General Hospital vs. Inhabitants of Stoneham, 233 Mass. 190, 124 N. E. 21.

17-18 1919, Same, 124 N. E. 21.

though such as were able to pay were expected to do so, as the hospital had no source of revenue other than such fees and donations to it, was a 'purely public charity,' whose land and buildings were exempt from taxation.''[19]

Even a hospital where all patients are paid for in part or in whole, does not necessarily lose its exemption.[20] A testatrix gave property to three persons in trust for the establishment of a hospital. The hospital received private pay patients, while public patients went there of their own accord, or were sent by the county and certain near-by cities, including the city in which the hospital was located, and which was seeking to subject the hospital to taxation. No patients were kept without charge, but some of those who came of their own accord failed to pay, and no one had ever been turned away because of inability to pay. The county and the cities compensated the hospital for patients sent by them, but in sums less than actual cost. The trustees served without pay and there was no private gain. The profit from private patients who paid for their care and treatment went into the general fund of the hospital and was used for maintaining it and under these circumstances the Court held that the hospital property was exempt from taxation as a public charity.[1]

''The fact that the institution received a revenue from the recipients of its bounty sufficient to keep it in operation does not take from it its character as a purely public charity, where it was founded and endowed as such, and when all of the receipts go to providing for the purposes for which it was erected and maintained.[2] The municipalities and the

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19 "The charge made to patients who are financially able to pay the same is shown not to be made 'with a view to profit' in the words of our statute, but for the purpose of carrying out the dominant purpose and general beneficent design of the founders of the institution. Such funds as are collected from patients do not go to any stockholders, for there are none, nor to accumulate in the coffers of the institution, but are used for the maintenance of the hospital and the furtherance of the announced purpose of its foundation." 1918, Scott vs. All Saints Hospital, 203 S. W. 146.

20 1915, City of Dayton vs. Trustees of Speers Hospital, 165 Ky. 56, 176 S. W. 361.

1 1915, Same, 165 Ky. 56, 176 S. W. 361.

2 "However charitable and benevolent the corporations may be, they are exempt from taxation only when their profits are solely appropriated (1) to sustain the institution; (2) for the benefit of the sick and disabled members of their families and the burial of same; and (3) for the

county itself in which the institution is located and whose duty it is to care for the indigent sick of each of them, respectively, have by its use, been saved the burden of erecting an institution of the kind of their own, or otherwise caring for such sick."[2]

In another case a corporation conducted a hospital, its only source of income being from donations and receipts from patients who were able to pay for the treatment received. It received all patients who applied, and gave free accommodations to all patients unable to pay. The treatment of free cases was the same as that of pay patients, except that the free cases were accommodated in wards instead of in private rooms. Any regular medical practitioner was privileged to send patients to the hospital and treat them there, and the institution made no profits. The institution was held to be within the provision exempting from taxation "all property of institutions of public charity."[3]

Buildings and grounds used by a Sisterhood solely as a public hospital, the members receiving no compensation and their earnings and lives being devoted to charity, have been declared exempt from taxation under the constitutional provision exempting buildings and grounds and materials used exclusively for public charity, although pay patients were received, the proceeds being used to maintain the institution.[4]

It has been held[4] that land and buildings donated to a corporation organized for charitable purposes, and used as a home for consumptives, are exempt from taxation under the Constitution and statute exempting real estate used for strictly charitable purposes, notwithstanding the fact that payment was exacted from the patients for the actual necessi-

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maintenance of persons unable to provide for themselves . . . ." There seems to be no justification for the conclusion that "a charitable institution must necessarily be founded exclusively upon gratuities or donations or that it loses its exemption status because it goes in debt for its plant and pays that debt, and the interest accruing on it, out of its incidental earnings, and certainly there is no language in our Constitution or statute warranting such a distinction." 1924, Santa Rosa Infirmary vs. City of San Antonio, 259 S. W. 926; see also 1922, In re St. Elizabeth Hospital, 189 N. W. 981.

3 1908, German Hospital vs. Board of Review, 233 Ill. 246, 84 N. E. 215.

4 1907, Hot Springs School Dist. vs. Sisters of Mercy, etc., 84 Ark. 497, 106 S. W. 954.

ties furnished, according to their circumstances and the accommodations they received.

The Court declared that the character of an institution is to be determined by the purpose of its construction and the manner of its operation.

"We do not think that the right to exemption is affected by the fact that a few pay, or all pay, so the amount received does not exceed the expenses, and the institution is not maintained for gain or profit, and the sums paid or contributed are devoted to the purpose for which the charity was founded."[5]

No part of the property of an institution of public charity is rendered taxable by the fact that a department thereof is reserved exclusively for the use of patients who pay a higher rate than others, where the profits thus realized are used to extend the institution's capacity for good. "It was not contended, nor is there anything to show, that there was any actual profit realized in this department, after taking into consideration the value of the ground and improvements, and the cost of maintenance. The apparent profit is applied to the general objects of charity, and no portion of it inures to the benefit of any person concerned in administering the charity."[6]

In another Pennsylvania case the Pennsylvania Hospital was declared to be a purely public charity, and as such exempt from taxation. The mere fact that it charges a sum to a portion of those who feed at its tables and enjoy the shelter of its roof does not destroy its character as a public charity.[7]

"All of its property is undoubtedly used in the line of the charitable purpose of its incorporation, and the ultimate test of its character must be the result of the work as a whole. Neither the president nor directors receive any salary or emolument of any kind for their services in connection with the institution, nor is profit of any kind derived in any way

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5 1906, St. John's Cathedral vs. Denver, 37 Colo. 378, 86 Pac. 1021. On an issue as to whether this institution was a charitable one, evidence that the manager thereof had issued a prospectus stating that the institution was not a charitable one was inadmissible.

6 1893, City of Philadelphia vs. Pennsylvania Hospital for the Insane, 154 Pa. St. 9, 25 Atl. 1076.

7 1890, City of Philadelphia vs. Pennsylvania Hospital, Ct. of Common Pleas, 8 Pa. Co. Ct. Rep. 72.

from its property or work. This stamps its character, and in connection with the purpose of its incorporation, the nature of its endowments, the source of its revenue, and the work in which it is engaged, constitutes it in the highest sense an institution of charity; that it is public also in its character seems equally clear. It does not discriminate as to race, sex, or religion, but receives equally all who apply."[8]

Restrictions which are made as to particular classes of cases, or groups such as persons of a certain race or religious belief, or members of a certain society, do not subject a hospital to taxation, if in other respects the hospital is operated as a charitable institution.

The degree of free charity work is not important in determining the right of exemption. "A hospital which received sick persons, other than those afflicted with contagious diseases, extending free treatment to paupers, charging for its services to others to the extent of what they were able to pay, devoting all its property to the purpose of treating its patients, who had been approximately ninety-five per cent pay patients and five per cent charity patients, using any surplus funds to keep up and improve its property and pay interest on bonded indebtedness and maintaining a nurses' training school, was a "corporation or society organized and exclusively used for charitable purposes," as a public charity, whose property was exempt from taxation."[9]

§ 148. **Purpose of Association Determines Status.** An

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8 1890, Same, 8 Pa. Co. Ct. Rep. 72.

9 1918, Lutheran Hospital of South Dakota vs. Baker, 40 S. D. 226, 167 N. W. 148.

The criterion in this class of cases seems to be that whatever is done or given gratuitously in the relief of public burdens or for the advancement of the public good is a public charity, and an institution founded as a purely public charity does not lose its character as such under the tax laws if it receives a revenue from the recipients of its bounty sufficient to keep it in operation; or, applying another test, if the object for which an institution is founded is the general public good and not private gain, and it is so conducted that the public receives all the benefits of it, application of the entire income as within the scope of this act must depend upon the conditions existing in each case.

In Mason County et al. vs. Hayswood Hospital of Maysville, the receipt of moneys from the sick and disabled persons treated therein was found to be insufficient to keep up and maintain the hospital, nor was it the purpose of the plaintiff to make it a paying institution. The institution was found to be one of purely public charity and not operated for profit. 1915, 167 Ky. 17, 179 S. W. 1050. See also, 1923, City of San Antonio vs. Santa Rosa Infirmary (Tex.), 249 S. W. 498.

earlier Massachusetts case, New England Sanitarium vs. Inhabitants of Stoneham, brought up the question for decision as to whether the real and personal property of the petitioner upon which the respondent assessed and collected a tax, was exempt under the provisions of Rev. Laws, C. 12, Sec. 5, Cl. 3. The commissioner reported the sources of income, and various findings of fact and law. In his summary of the work accomplished during the six years of its domicile in the defendant town, he states "that of the entire number of patients admitted by far the larger part were paying patients, but it also appears that the expenses in some years were so increased by caring for free patients and those who could not pay in full, and by disbursements for outside charitable work that a deficit resulted. . . . It was run rather as a health resort which, while its purposes were humanitarian, did not necessarily or primarily help to relieve the community of its burden of caring for the indigent sick."[10]

"It may be conceded that a trust for the exclusive benefit of the least wealthy of a well-to-do or prosperous class could not be sustained as a charity under St. 43 Eliz., C. 4, Atty. Gen. vs. Northumberland L. R. & Ch. Div. 734. But the controlling purpose may be none the less charitable, even if those who need no pecuniary aid are either directly or indirectly benefited. A hospital established for the free treatment of poor patients may receive payment from rich persons who are permitted to avail themselves of its benefits. Every charity created for the gratuitous treatment and relief of disease, or the physical infirmities of the indigent or other purposes enumerated in this statute, or, if not enumerated, which are held to come within its spirit and intendment, in a large sense helps and aids the community, without regard to the social rank or pecuniary condition of its members. Lord Camden in Jones vs. Williams Ambl. 651, tersely defined a charity to be a "gift to a general use, which extends to the poor as well as the rich." . . . The increase of charitable funds, through receipts from patients or inmates who are able to pay wholly or partially for benefits received, does not change a home for aged people, or hospital organized and conducted as a charity, into a private association, maintained

[10] 1910, 205 Mass. 335, 91 N. E. 385.

for the pecuniary advantage of the promoters. The original eleemosynary character of the institution is not transformed by this patronage, even if sufficient to relieve it from financial burdens, but the charity as established remains unaffected." . . . [11]

"If, as the commissioner finds, payments were received from patients who were able to pay the prices charged for food and lodging provided, or medical services rendered, he also reports that no part of the revenue was retained for compensation or divided as profits. . . . The petitioner's statutory rights are not to be ascertained by an apportionment of the classes who may have been benefited, and if the number of paying patients preponderates the exemption fails. The dominant purpose for the promotion of which the institution was organized and has been maintained, furnishes the test, whether it is a charity, or a business organization conducted for commercial gain, with incidental acts of benevolence and philanthropy. To be entitled to the exemption the statute requires that the property not only shall be owned, but must be occupied for the charitable purposes of its incorporation."[12]

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[11] Same, 1910, 205 Mass. 335, 91 N. E. 385.

[12] A corporation for the purpose of maintaining a hospital and dispensary, a school of medicine and surgery, and a training school for nurses, which charges no tuition fee except for the post-graduate course in medicine and surgery, and then only sufficient in amount to pay cost of maintenance, and which received all persons within its capacity presenting themselves for treatment, regardless of whether they were able to pay the cost of their keep and treatment, and charging those only who are able to pay, was held to be an institution of public charity within the statute exempting the property of such institutions from taxation. 1908, Board of Review vs. Chicago Polyclinic, 233 Ill. 268, 84 N. E. 220. Also 1908, German Hospital of Chicago vs. Board of Review of Cook County, 233 Ill. 246, 84 N. E. 215.

No new points in this connection were brought up in 1907, Hot Springs School District vs. Sisters of Mercy of Female Academy of Little Rock, 84 Ark. 497, 106 S. W. 954. The appellant claimed that the institution was not one of public charity because pay patients are received and those able to pay were charged for prescriptions. The Court said that "in this case the buildings were constructed and fitted for use solely as a public hospital. The members of the order receive no compensation for themselves. Their earnings and their lives are devoted to charity."

In the case of Michigan Sanitarium and Benevolent Assn. vs. City of Battle Creek, it was said that a sanitarium association, incorporated under Comp. Laws 1897, C. 224, is sufficiently charitable in its character to entitle its property to exemption from taxation, under section 7 (Comp. Laws 1897, Sec. 8294), where the charges collected

§ 149. **Exemption as a Contract Right.** Does an institution which is exempted from taxation when established acquire a perpetual right to exemption? Does such an exemption constitute a contract which may not be impaired by subsequent legislation? Does a hospital, which was given a specific exemption from taxation in a special charter acquire perpetual rights of exemption? These questions involve the interpretations of state constitutional prohibitions against impairing the obligations of contracts and particularly the provision of the Federal Constitution which prohibits states from passing laws impairing the obligation of a contract. All reasoning on these questions goes back to the Dartmouth College case in which a charter given to a college was held to be a contract which the State Legislature could not amend or take away.[13]

After the Dartmouth College case, which held that corporate charters are contracts protected by the Constitution of the United States, the states began to insert provisions, in special acts or general corporation laws, reserving the power

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for services are not more than are required for its successful maintenance. 1904, 138 Mich. 676, 101 N. W. 855.

The Pennsylvania Hospital case points out that the charges made do not benefit any person concerned in administering the charity and although one department is reserved exclusively for the use of patients who pay a higher rate than others, the profits realized are used to extend the capacity of the institution. 1893, 154 Pa. 9, 25 Atl. 1076. Also 1890, 8 Pa. Co. Ct. 72.

As was pointed out heretofore, it is the use to which property is devoted which determines the exemption. 1903, Cooper Hospital vs. City of Camden, 68 N. J. L. 85, 54 Atl. 419.

The same idea was advanced by the New Hampshire Court. Laws 1905, p. 432, C. 40, § 1, imposes a tax on property passing by will, except to or for the use of charitable, educational, or religious societies in the State. Laws of 1907, p. 66, amendatory thereto makes the exemption of legacies to such institutions from tax or impost to apply only "when such society or institution is bound by the terms of the will, . . . or by the limitation of its powers, to devote such property solely to such uses and purposes that the property in its hands will be by law exempt from taxation." "Under the former law, no inheritance tax was chargeable upon a legacy to a charitable, educational, or religious society which enjoyed, under the law, immunity from taxation upon its property. The use to be made of the funds bequeathed to such a society was not deemed to be important, at least, it was not regarded by the Legislature as so essential as to be declared to be the test of exemption. Under the latter statute, it would seem the exemption attaches in such a case only when it appears that the money or property devoted must be devoted to such uses by the society that it will be exempt from the general yearly tax burden." 1908, Carter vs. Whitcomb, 74 N. H. 482, 69 Atl. 779.

[13] 1819, Dartmouth College vs. Woodward, 4 Wheat. (U. S.) 673.

to alter, amend or repeal. Where, in a charter granting an exemption from taxation, such reservation is made, whether it is contained in the act itself, or in any other act which by reference is made a part of it, or in the State Statute controlling the terms of the act, it preserves to the State the right of amending or repealing the tax exemption whenever the public interest as determined by the Legislature requires.[14]

Where the exemption was granted prior to the passage of the constitutional reservations and was in the nature of a contract, then such exemptions may not be repealed. But such contract must be clear and unequivocal. Exemptions from taxation are not favored and one who seeks exemption must prove beyond question that a valid contract existed. The whole question was expounded by the New Jersey Supreme Court in Cooper Hospital vs. City of Camden.[15] In this case the hospital sought exemption on the claim of an irrepealable contract of exemption in its charter.

"The hospital claims immunity upon two grounds, viz: (1) That an irrepealable contract is to be found in the charter of the institution, by which its property is exempted from taxes and assessments. Laws 1875, P. L., p. 170. (2) That if not thus exempted by the charter, the property in question is exempt under the general tax act of May 15, 1894 (Gen. St., p. 3320).[16]

The Supreme Court held that the charter exemption was annulled, so far as related to ordinary taxation, by the constitutional amendment adopted in September, 1875, requiring that property shall be assessed for taxes under general laws. But following the decision of the same court in Cooper Hospital vs. Burdsall, it held that an exemption of the property in question from ordinary taxation arises from the tax act of 1894.[16] At the same time the Court held that the constitutional amendment did not relate to assessments for special benefits, derived from local improvement, . . . "Therefore, finding the charter exemption of the Cooper Hospital unrepealed, so far as such assessments are concerned, either by the constitutional amendment or by subsequent legislative

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[14] Judson on Taxation, 1903, Sec. 85. 419.

[15] 1903, 68 N. J. L. 691, 54 Atl. 853.

[16] 1899, 63 N. J. L. 85, 42 Atl.

act, and dealing with case No. 7 between these parties as involving an assessment for special benefits, the Court set aside that assessment as violative of the charter exemption . . . ."[17]

Does the case show a contract between the State and the Cooper Hospital exempting from taxation the several properties in question?

A contract that disables the State from exercising the sovereign prerogative of taxation with respect to the property of a given corporation is in derogation of common right, and, so far as it goes, is subversive of the power of the government itself. Every reasonable intendment is against the existence of such a contract. He who comes into court asserting its existence must be prepared to show that in fact it was made as alleged, and that its terms are such as to reasonably admit of no other interpretation than that claimed. . . . ."[18]

The case "shows no contract between the State and the Cooper Hospital, providing for the exemption of the property and effects of that corporation from the imposition of taxes. Had the making of such a contract been shown, the question would still remain whether the exemption must not be limited to such property and effects as were acquired previous to the adoption of the constitutional amendments."

The reserved power to alter or repeal a charter will not be held to have been exercised by implication in a case where to do so will result in the violation of a promise by the State through which the conveyance of property was induced to a domestic benevolent corporation; which property, except for the promise, might have been given outside the State. "Where the transfer of property, in endowment of a charitable corporation, was indirectly induced by a promise of an exemption from taxation, which was acted upon, it will not be presumed that the Legislature, in passing a general law, operative in repeal of prior exemptions, intended to repeal any exemptions awarded under such circumstances."[19]

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17 1903, Cooper Hospital vs. City of Camden, 68 N. J. L. 691, 54 Atl. 419.

18 1903, Same, 68 N. J. L. 691, 54 Atl. 419.

19 1909, People ex rel. Roosevelt Hospital vs. Raymond, 194 N. Y. 189, 87 N. E. 90.

This case overruled several

§ 150. **Property Included in Exemption.** As stated heretofore the tax exemption will be strictly construed. The question is raised about the exemption of buildings, the amount of lands included.[20]

Unless so expressly phrased, the exemption will not include property incidental to the purpose of running the hospital and does not extend to revenues of property owned by charitable corporations although devoted to charitable purposes. Such property is exempt only when actually and directly used for such purpose.[1] The institution need not be public but may be controlled by private individuals if the charity is purely public.[2]

The amount of exemption in any case is dependent upon the wording of the statute and the holdings in the various states differ. The provisions of the various statutes are enumerated elsewhere; a general summary is given here.

Land which is acquired but not yet used for the erection of a hospital may not be exempt.[3]

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previous decisions of the Court of Appeals.

Ch. 4 of Laws of 1864, § 3, incorporating Roosevelt Hospital provided that "the property, real and personal, of said corporation shall be exempt from taxation." It was held that from the circumstances under which the charter was enacted, this provision is not to be deemed repealed by the general tax law.

20 1. Exemption includes only land on which buildings are situated. 1896, Thurston County vs. Sisters of Charity, 14 Wash. 264, 44 Pac. 252.

2. Exemption of land includes that on which the institution is situated and a reasonable amount appurtenant thereto. 1907, Sisters of Charity vs. Corey, 73 N. J. L. 699, 65 Atl. 500. 1890, Sisters of Charity vs. Chatham Twp., 52 N. J. L. 373, 20 Atl. 292; 1886, Mass. Gen. Hosp. vs. Inhabitants of Sommerville, 101 Mass. 319.

3. Exemption includes buildings used exclusively for charitable purposes with the land whereon the same are erected, and which may be necessary for the fair enjoyment thereof. 1903, Cooper Hospital vs. City of Camden, 68 N. J. L. 691, 54 Atl. 419; 1901, Congregation of St. Vincent de Paul vs. Brakely, 67 N. J. L. 176, 50 Atl. 589; 1916, Denville Twp. vs. St. Francis Sanatorium, 89 N. J. L. 293, 98 Atl. 254.

4. Such real estate as is necessary to the successful operation of the hospital is exempt. 1904, Cooper Hospital vs. City of Camden, 70 N. J. L. 478, 57 Atl. 260.

1 1876, New Orleans vs. St. Patrick's Hall Assn., 28 La. Ann. 512; 1890, State vs. Collector of Chatham, 52 N. J. Law (23 Vroom) 373, 20 Atl. 292; 1909, People vs. Raymond, 194 N. Y. 189, 87 N. E. 90; 1875, Northwestern University vs. People, 80 Ill. 333.

2 1904, Humphreys vs. Little Sisters of the Poor, 7 Ohio Dec. 194, 1 Ann. Cas. 233.

3 1884, Enault vs. McGuire, 36 La. Ann. 804, 51 Am. Rep. 14; 1873, New England Hospital vs. Boston, 113 Mass. 518.

The exemption may be limited to such real estate as is held for the erection of hospital buildings.[4]

The question of the exemption of such land which is held for hospital purposes is for the jury.[5]

Charitable corporations may not hold lands in another county free from taxation.[6]

Property which is necessary to the accommodation of inmates and servants of the institution is exempt but not funds invested in other lands or securities,[7] and property which is leased by the hospital, the revenue therefrom applied to the uses of the hospital, is exempt.[8]

Where property is not in actual use by the institution but is held for future developments or for speculation, the matter of exemption is dependent, first, upon the wording and extent of the statute, and, secondly, upon the use or character of the property.

The leasing of some property through the summer does not waive the exemption.[9]

Religious property leased for secular purposes is not exempt.[10]

Property leased as a store is not exempt though revenue is applied to charitable purposes.[11]

Exemption sometimes extends to property such as stores owned by the corporation and rented for revenue applied toward maintaining an institution[12] but does not extend to property of the charity rented for revenue.[13]

Property leased from charitable corporations is not exempt.[14]

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4 1904, Cooper Hospital vs. City of Camden, 70 N. J. L. 478, 57 Atl. 260.

5 1906, Sanatorium vs. Keese, 98 N. Y. S. 1088.

6 1878, Delaware County vs. Sisters of St. Francis, 2 Del. County Ct., Rep. 149.

7 Contrib. to Penna. Hosp. vs. County of Del. (Common Pleas), 15 Pa. Co. Ct. R.

8 1909, People vs. Raymond, 194 N. Y. 190, 87 N. E. 90.

9 Seminary vs. Cramer, 98 N. Y. 121.

10 1840, Proprietors, etc. vs. Lowell, 1 Metcalf (Mass.) 538.

11 1902, State vs. Board, 16 S. D. 219, 92 N. W. 16; 1893, Brodie vs. Fitzgerald, 57 Ark. 445, 22 S. W. 29; 1879, New Orleans vs. St. Ann's Asylum, 31 La. Ann. 292; 1876, New Orleans vs. St. Patrick's Hall, 28 La. Ann. 512.

12 1885, New Orleans Female Asylum vs. Houston, 37 La. Ann. 69; 1881, Asylum vs. New Orleans, 105 U. S. Rep. 362.

13 1885, Asylum vs. Houston, 37 La. Ann. 68; 1878, Appeal Tax Ct vs. St. Peter's Academy, 50 Md. 321.

14 1875, New Orleans vs. Russ, 27 La. Ann. 413.

Product from a garden which is operated by the hospital and is sold at a profit which was returned to the institution for maintenance does not set aside exemption.[15] Farm or garden property may or may not be exempt.[16]

Such property may be in the form of funds or endowments held as actual or real property.[17]

§ 151. **Exemption from Inheritance Taxes.** A general exemption either in the Constitution or the general property taxes does not of necessity exempt from special taxes such as income,[18] inheritance, corporation taxes, or special assessments. Such exemptions may be provided in the laws themselves as in the case of federal taxes.

Where the recipient of the will, gift, devise, or bequest is a foreign corporation, there may or may not be an exemption from the inheritance or transfer tax. It has been shown before that a provision permitting exemption from taxation is strictly construed by the courts. A corporation, on the other hand, is merely an artificial being, a legal fiction, as it were, for the purpose of simplifying and objectifying business activities. This means, then, that the corporation has legal being only within the jurisdiction of the chartering state so that the minute state or jurisdictional lines are crossed and new laws are in force, the character of the institution has

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15 People vs. Purdy, 58 Hun. 386, 12 N. Y. S. 307; 1890, affirmed, 126 N. Y. 679, 28 N. E. 249; 1881, Asylum vs. New Orleans, 105 U. S. Rep. 362.

16 GARDEN:

Exempt: 1881, Hennepin County vs. Brotherhood of Gethsemane, 27 Minn. 46, 8 N. W. 595.

Not exempt: 1889, State vs. Assessors, 52 La. Ann. 223, 26 So. 872.

FARM:

Exempt: 1895, Penn. Hospital vs. Delaware County, 169 Pa. 135, 32 Atl. 456; 1901, People vs. Purdy, 58 Hun. (N. Y.) 386; 1887, School vs. Gill, 145 Mass. 139.

Not exempt: 1905, State vs. St. Barnabas Hospital, 95 Minn. 489, 104 N. W. 551.

17 PROPERTY HELD:

1906, Sanatorium vs. Keese, 112 App. Div. 738, 98 N. Y. S. 1088.

1899, Cooper Hospital vs. Burdsal, 63 N. J. L. 85, 42 Atl. 853.

Same vs. City of Camden, 68 N. J. 691, 54 Atl. 419, reversing 68 N. J. 208, 52 Atl. 210, and overruling, 63 N. J. L. 85, 42 Atl. 853.

1904, Same, 70 N. J. L. 478, 57 Atl. 260.

1884, Enault vs. McGuire, 36 La. Ann. 804, 51 Am. Rep. 14.

PROPERTY LEASED:

1908, People vs. Raymond, 111 N. Y. S. 177, 126 App. Div. 720.

1902, State vs. Board of Equalization, 16 S. D. 219, 92 N. W. 16.

1895, State vs. Cooley, 62 Minn. 186, 64 N. W. 379.

1840, Proprietors, etc. vs. Lowell, 1 Metc. (Mass.) 538.

18 1903, Cooper Hospital vs. City of Camden, 68 N. J. L. 85, 54 Atl. 419, etc.; 1903, State vs. Seabury Mission, 90 Minn. 92; Contra 1878, Tax Court vs. St. Peter's Academy, 50 Md. 343.

(See next pages.)

no standing before the law in the second state unless "such state has in turn breathed the breath of legal life into it." In other words, a New Jersey corporation has no legal status before the Illinois courts and to have such status it must be chartered under Illinois statutes. In the chapter on incorporation the laws governing the entry of foreign corporations into the various states were briefly summarized and it was there shown that sometimes the only request for doing business is the approval of the charter or articles of incorporation by the Secretary of the State in which business is to be done and sometimes the additional requirement that offices be established therein. It was shown that some states make special concessions to charitable corporations while others do not.[19]

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[19] 1920, **In re** Burnham's Estate, 183 N. Y. S. 539.

Exemption from inheritance taxes must be expressed in the statute. 1909, **In re** Mackey's Estate, 46 Colo. 79, 102 Pac. 1075. 1909, Carter vs. Whitcomb, 74 N. H. 482, 69 Atl. 779.

1899, Dilworth vs. Stamp Commissioner, A. C. 99, 107, 68 L. J. P. C. 1.

1901, State vs. Henderson, 160 Mo. 190, 60 U. S. 1093.

1920, **In re** Burnhams Estate, 183 N. Y. S. 539.

An excise on the right to receive property is a tax. 1897, State vs. Switzler, 143 Mo. 333.

The inheritance tax is not one on property but one on succession.
1905, **In re** Speeds Estate, 216 Ill. 23, 74 N. E. 809.
1897, Mayoun vs. Ill. Trust Co., 170 U. S. 283.
1897, Kochersperger vs. Drake, 167 Ill. 125, 47 N. E. 322.
1896, U. S. vs. Perkins, 163 U. S. 625.
1913, Washington Hospital vs. Mealey's, 121 Md. 274, 88 Atl. 136.
1901, State vs. Henderson, 160 Mo. 190, 60 S. W. 1093.
1902, Orr vs. Gilman, 183 U. S. 278.
1900, Plummer vs. Coler, 178 U. S. 115.
1905, Successors of Levy, 115 La. 377, 39 South 37.
1909, **In re** Mackey's Estate, 46 Colo. 79, 102 Pac. 1075.

The imposition of the tax cannot depend on residence.
1889, State vs. Dalrymple, 70 Md. 294, 17 Atl. 82.

A corporation owned by the State and supported by a public tax is not the object of a charitable bequest.

Exempt. 1907, **In re** Higgins Estate, 106 N. Y. S. 465.
1890, **In re** Vassar, 127 N. Y. L., 27 N. E. 394.

Charitable gifts are exempt from the inheritance tax law. 1909, **In re** Graves Estate, 242 Ill. 23.

It is the use and not the motive which determines exemption from the inheritance tax. 1898, **In re** Kimberly's Estate, 50 N. Y. S. 586.

The purpose of the gift determines exemption.
1886, Mass. Society vs. Boston, 142 Mass. 24, 6 N. E. 840.
1908, Carter vs. Whitcomb, 74 N. H. 482, 69 Atl. 779.

A charitable institution maintaining a day nursery for which it makes a small charge is not exempt from the legacy tax as an almshouse. 1890, **In re** Vanderbilt's Estate, 10 N. Y. S. 239.

A corporation exempt from taxation by the laws of another state

§ 152. **Taxation of United States Property by States.** The taxing power of the Federal Government is outlined primarily in the United States Constitution, Article 1, Section 8, giving Congress the power "to lay and collect taxes, duties, imports, and excises, to pay the debts and provide for the common defense and general welfare of the United States." The general problems and limitations of federal taxation will not be developed here. It will merely be pointed out that certain policies have arisen. For example, a state cannot tax the property of the United States located within its limits,[20] but a bequest to the United States may be subjected to an inheritance tax by a state, since it is the right to bestow and not the right to receive which is taxed in such a case, and the tax is not considered either a tax on the property or on the operation of the United States.[1]

"Though in the early decisions of a few state courts it was a question whether the property of the United States, especially if it was not devoted to public and governmental uses, was exempt from state taxation, the question has long been settled in favor of the exemption of such property. By the conditions of the Acts of 1811 and 1812, under which the State of Louisiana was admitted into the Union, it was expressly provided that no taxes should be imposed on lands the property of the United States, and on the admission of every other state since that time the exemption of the lands of the United States from taxation by the State has been declared (sometimes in the form of a condition imposed by

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is not exempt from inheritance tax law. 1894, Merret vs. Winthrop, 38 N. E. 512.

1906, In re Hickock, 78 Vt. 259, 62 Atl. 724.

1904, Humphreys vs. State, 70 Ohio 67.

1910, In re Crawford, 148 Iowa 60, 126 N. W. 774.

1893, In re Prime, 136 N. Y. 347, 32 N. E. 1091.

1905, In re Speed's Estate, 216 Ill. 23, affd. 203 U. S. 553.

Exemption under the Inheritance Tax Law is not confined to domestic corporations.

1917, Re Frain, 141 La. 932, 75 So. 847.

1900, Litz vs. Johnson, 65 N. J. Law 169, 46 Atl. 776.

1918, Estate of Fiske, 172 Pac. 390.

U. S. Bonds or exempt securities not exempt from State Inheritance Tax.

1900, Plummer vs. Coler, 178 U. S. 115.

1905, Succession of Levy, 115 La. 377, 39 South 37.

[20] Van Brocklen vs. Tennessee, 117 U. S. 151, 6 S. Ct. 67, 29 U. S. (Led.) 845.

[1] 1819, McCullock vs. Maryland, 4 Wheat. (U. S.) 316, 4 U. S. (Led.) 579.

Congress, and sometimes in the form of a proviso to a proposition to grant the State certain lands or money offered for its acceptance or rejection) in phrases somewhat varying, but substantially similar to one another. The legislatures of most of the states have affirmed the same principle, by inserting in their general tax acts an exemption of property belonging to the United States.''[2]

§ 153. **Local Assessments Not General Taxes.** A local assessment is not considered to be a general tax, hence not of necessity within the provision of tax exemptions. A local assessment such as a sewer, street, or water assessment is in reality not a tax but an assessment for a supposed benefit. It may be that by its charter, a community may or may not allow for such exemptions from assessments.[3] In event that they are permitted the decision, the ruling, is, of course, within their hands.[4]

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2 13 R. C. L. 96. Sec. 72.

3 The city charter does not give the right nor has a village any inherent power to impose taxes on property or persons except such as is clearly conferred by statute. "The charter can have no such meaning; it means only all such property as is under the general laws taxable. 1923, Wilmington vs. Assn., 122 Atl. 442. See also 1924, Petition of Fuller, 197 N. W. 552.

4 1920, **In re** Burnham's Estate, 183 N. Y. S. 539.
1918, Contra Estate of Fiske, 55 Cal. Dec. 663, 172 Pac. 390.
1917, Re Frain, 141 La. 932, 75 So. 847.
1910, Matter of Crawford, 148 Iowa 60, 126 N. W. 774.
1906, Estate of Hickock, 78 Vt. 259, 62 Atl. 724.
In re Speeds Estate, 216 Ill. 23, 203 U. S. 553.
1904, Humphrey's vs. State, 70 Ohio 67, 70 N. E. 957.
1902, Orr vs. Gilman, 183 U. S. 278, 22 Sup. Ct. 213.
1901, Congregation of St. Vincent de Paul vs. Brakely, 67 N. J. L. 176, 50 Atl. 589.
1900, Litz vs. Johnson, 65 N. J. L. 169, 46 Atl. 776.
1894, Minot vs. Winthrop, 162 Mass. 113, 38 N. E. 512.
1893, **In re** Prime, 136 N. Y. 347, 32 N. E. 1091.
The exemption from taxes will not apply to local assessments.
1881, Asylum vs. New Orleans, 105 U. S. 362.
1894, Beatrice vs. Brethren Church, 41 Neb. 358, 59 N. W. 932.
1891, City of Phila. vs. Contributors to Penna. Hospital, 143 Pa. 367, 33 Atl. 744.
1890, Phila. vs. Penna. Hospital, 134 Pa. St. Rep. 171, 19 Atl. 490.
1898, Washburn Memorial Orphan Asylum vs. State, 73 Minn. 343, 76 N W. 204.
1881, Roosevelt Hospital vs. Mayor, 84 N. Y. 108.
1877, Frederick County vs. Sisters of Charity, 48 Md. 34.
1872, Sheehan vs. Good Samaritan Hospital, 50 Mo. 155, 11 Am. Rep. 412.
1877, "Assessment and tax not synonymous terms."
In re St. Joseph's Asylum, 69 N. Y. 353.
1891, Phila. vs. Penna. Hospital, 143 Pa. St. 367, 22 Atl. 744.
1893, Phila. vs. Penna. Hospital, 154 Pa. St. 9, 25 Atl. 1076.

Property owned by the United States is not subject to local assessments, which principle applies to all land used and owned by the United States for public purposes. Public property other than that owned by the United States may be taxed or exempted at the discretion of the State Legislature, since it has full power over the property of the State and of the public corporations and quasi corporations. "The effect

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The exemption from taxes will apply to local assessments.
1894, Baltimore County vs. Maryland Hospital, 62 Md. 127.
Public property exempt.
1897, Oakland Cemetery Assn. vs. City of St. Paul, 36 Minn. 29, 32 N. W. 781.
1877, City of St. Paul vs. St. Paul R. Co., 23 Minn. 469.
The exemption from taxes is implied in case of all public property.
1901, Denver vs. Bonesteel, 28 Colo. 483, 65 Pac. 628.
1909. In re Mackey's Estate, 46 Colo. 79, 102 Pac. 1075.
Department managed for profit.
1893, Phila. vs. Penna. Hosp., 154 Pa. St. 9, 25 Atl. 1076.
Foreign corporations not exempt.
1877, People vs. Western Seaman's Friend Society, 87 Ill. 246.
Foreign corporations exempt.
1901, Congregation of St. Vincent de Paul vs. Brachely, 67 N. J. L. 176, 50 Atl. 589.
It is generally held that a local assessment is not a tax within the meaning of constitutional and statutory exemptions.
1874, Boston Seaman's Friend Society vs. Mayor of City of Boston, 116 Mass. 181, 17 Am. Rep. 153.
1872, Sheehan vs. Good Samaritan Hospital, 50 Mo. 155, 11 Am. Rep. 412
1881, Roosevelt Hospital vs. Mayor, 84 N. Y. 108.
Property which belongs to a charitable corporation or association and is used for charitable purposes is not, in the absence of a statute specifically exempting it from local assessment, exempt therefrom. 1909, Page and Jones, Taxation by Assessment, Sec. 589.
In some jurisdictions it is said to be a question of fact to be determined by the assessing body, whether such land is in fact benefited or not. 1900, Kansas City vs. Bacon, 157 Mo. 450, 57 S. W. 1045.
The fact that property held for such charitable use is exempt from general taxation does not exempt it from local assessment as stated heretofore.
In some jurisdictions the provisions may be construed a prima facie applicable to local assessment. 1880, Olive Cemetery Co. vs. Philadelphia, 93 Pa. St. (12 Norris) 129, 39 Am. Rep. 732.
In the same jurisdiction a provision exempting property "from taxation except for state purposes" has been held to exempt such property from local assessments levied on the theory of benefits. 1891, Philadelphia vs. Pennsylvania Hospital, 143 Pa. St. 367, 22 Atl. 744.
This exemption, however, it has been held, does not apply to exactions levied for the non-performance of a legal duty and charges for the construction of sidewalks may be levied against property so exempt. 1890, Wilkensburg Borough vs. Home for Aged Women, 131 Pa. St. 109, 18 Atl. 937.
Full effect is given to a specific exemption from local assessment. 1888, State ex rel. Benedictine Sisters of Elizabeth vs. City of Elizabeth, 50 N. J. L. (21 Vr.) 347, 13 Atl. 5.

of including state property in local assessment is really to transfer a proportionate part of the burden from the property owners benefited by such improvement, or from the general taxpayers of the city, to the general taxpayers of the State. The effect of including property belonging to a city or other public corporation in an assessment is to transfer the burden of taxation from the owners of property benefited by such assessment to the general taxpayers of the public corporation. Questions as to whether public improvements shall be paid for by general taxation or by local assessment are especially within the discretion of the Legislature where not restrained by specific constitutional provision. The question upon which there is a conflict of judicial authority is as to the effect of a general statute granting power to levy assessments upon property benefited, but not specifically providing for the assessment of public property, together with the absence of a statute specifically providing for the exemption of public property from the operation of local assessment. According to some authorities, it is to be presumed, under statutes, that the Legislature intended to assess all the property which it had the power to assess, including public property. On the other hand some authorities hold that the intention of the Legislature to shift a part of the burden to the general taxpayer cannot be presumed in the absence of some specific provision to that effect, and accordingly public property will be regarded as exempt in the absence of some specific provision authorizing its assessment.[5]

The Legislature undoubtedly has the power to authorize the city or other similar corporation to assess property within its limits belonging to a county when that property is especially benefited by a local improvement. Also the Legislature may make a specific exemption of such property. A conflict arises where the city has a general power to levy local assessments upon property benefited by improvement, without specifically exempting or including the county property.[6]

Illinois holds that the fact that county property is exempt

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[5] Page and Jones, Taxation by Assessment, Sec. 579, 580, et seq. 1884, Baltimore County vs. Maryland Hospital for the Insane, 62 Md. 127.

[6] Page and Jones, Taxation by Assessment, Sec. 582.

from general taxation, does not prevent the city from assessing it on the theory of benefits.[7]

§ 154. **Recovery of Illegal Taxes.** After a tax has been paid which is considered to be illegal or exorbitant, the question arises as to what method may be adopted for its recovery. It has been pointed out that the question of tax exemption involves primarily the interpretation of the statute under which exemption is claimed. This may be comprehensive or liberal, limited or unlimited. The problems of taxation are generally conceded to be for the most part administrative in character. It is customary to require the reporting of all properties whether taxable or non-taxable as in the case of the federal income taxes. Upon this report depends the official determination of the exemption, the non-exemption, or the extent of taxability.[8]

The ordinary method adopted is to pay the tax under

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7 1882, Cook County vs. City of Chicago, 103 Ill. 646.

A provision that property shall be "exempted from taxation of every kind" was construed.

1872, Sheehan vs. Good Samaritan Hospital, 50 Mo. 155, 11 Am. Rep. 412.

"from assessment and taxation under the revenue laws of the commonwealth or under any ordinance, resolution or other act of the city."

1893, Kilgus vs. Trustees of Orphanage of Good Shepherd, 94 Ky. 439, 22 S. W. 750.

"from all taxation by state or local laws for any purpose whatever."

1891, Zable vs. Louisville Baptist Orphans' Home, 92 Ky. 89; 17 S. W. 212.

"from all taxation either by the State, parish, or city."

1849, City of Lafayette vs. The Male Orphans' Asylum, 4 La. Ann. 1.

In each case, it has been held by the Court that a provision for exemption from taxation or assessment does not exempt from local assessment.

8 Figures compiled in New York City a few years ago give an idea of the money value of exempted properties. Report of the Comptroller of New York City, 1915, approximately $38,575,825.00.

Report of Comptroller of New York City, 1916: By charter the Board of Estimates of the City of New York is specifically authorized to appropriate moneys to a lay list of private charitable institutions named (Charter Sec. 230). In 1915 a summary of disbursements to private institutions showed for all boroughs including outside New York City:*

	Care and Maintenance	Educational and Vocational
Homes and Asylums	$3,557,491.93	$468,678.79
Hospitals, dispensaries, and sanatoriums	1,442,464.53	3,059.80

*Wallstein, Leonard M.: City Aid to Private Institutions by the City of New York. 1916. Similar report published for March, 1915.

protest and then sue for recovery; this is the method prescribed by statute in the case of federal income taxes.[9]

As was pointed out heretofore, the exercise of the power to tax is sovereign in character, and the courts are loath to interfere in such matters. In event of unfair assessment or collection, the method of appeal from the decision of inferior officers may be established by statute, that is, for example, from the local assessing authorities to the State Board of Equalization or Assessment. Unless the statute expressly provides a method for appeal to the courts, the findings of the Board as to matters of fact may be conclusive. But in matters of jurisdiction or law the courts will usually interfere and in the other situation they may interfere to correct or to control abuse.

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9 1855, Christ Church Hospital vs. Philadelphia, 24 Pa. 229. 1904, Michigan Sanitarium, etc., vs. Battle Creek, 138 Mich. 676, 101 N. W. 855.

CHAPTER VI

CONSTITUTIONAL AND STATUTORY TAX EXEMPTION

§ 160. **Methods of Providing for Exemptions.** The following chapter sets forth the actual constitutional and statutory provisions by means of which the institutions of a charitable or hospital nature may be exempt from taxation. The arrangement will be by state, and cases which have arisen under the various provisions will be discussed briefly, including a number relating to the religious, educational, or scientific institutions, where points involved in the organization of a hospital are developed, but have not as yet arisen in connection with an institution of that character.

Exemption from taxation may be derived from the State Constitution, the statutes, or from contract. The states as a rule exempt property used for charitable, educational, or religious purposes; the method and extent varying in the different states. The following states exempt charitable property by self-acting constitutional provision: Alabama, Arkansas, Colorado, Kansas, Kentucky, Louisiana, Minnesota, Oklahoma, South Carolina, South Dakota, and Utah.

Another group of states authorizes the Legislature to exempt property used for charitable, educational, and other purposes. Provisions are found in the states as follows: Arizona, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Missouri, Montana, Nebraska, Nevada, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Virginia, Washington, West Virginia, and Wyoming. The other states do not have constitutional provisions relating to exemptions and the Legislature is left to its own discretion in taxing or exempting the property of charitable or benevolent institutions. In some states the general rule that all property shall be taxed at a uniform rate would seem to prevent exemption, but even where such a rule exists as in Wisconsin, it is the common practice to exempt certain properties. The controversial

questions which arise in tax exemption relate to constitutional or statutory construction. In the first group of states where the Constitution explicitly indicates what shall be exempted the question is one of the meaning of the constitutional terms. When is an agency "a charitable institution" or an "institution of purely public charity"? The Legislature or the taxing authority must answer that question in defining or administering the tax law, but the courts may ultimately pass on the correctness of their interpretations. In the second group the Legislature is given authority to exempt certain properties described in general terms by the Constitution. The Legislature need not exempt any such property but if it does exempt property on the ground that it is used for charitable purposes then the purpose must be charitable or else the courts may interfere. Moreover, many of the states require that all property of certain general classes must be exempted if any of the class is exempted. General, not special laws, are, therefore, required.

In the states where there is no constitutional provision the legal question involves the construction of the statutes relating to exemptions. The meaning of words and phrases used becomes the important consideration.

§ 161. **ALABAMA: Constitution.** The Legislature shall not tax the property, real or personal, of the State, counties, or other municipal corporations . . .; or lots in incorporated cities and towns, or within one mile of any city or town to the extent of one acre, or lots one mile or more distant from such cities or towns to the extent of five acres with the building thereon, when same are used exclusively for . . . purposes purely charitable.[1]

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1 Alabama Constitution, 1901, Sec. 91.

It has been held that this provision is self-executing, and a tract of land with building thereon, located in the city of Anniston and used as a boarding school has been held exempt from taxation. Personal property used for such purposes is controlled by Sec. 2061 of the Code, since the Constitution makes no provision for its exemption. Under section 91, Const. 1901, the exemption of real property depends entirely upon the use to which it is devoted, and Sec. 2161, so far as it relates to real property and attempts to add the ownership of the property to the conditions of exemptions, is in contravention of the Constitution and invalid. In the opinion of the Court "it is manifest that section 91 of the Constitution makes use of the property, irrespective of ownership, the test of the right of exemption from taxation, and that, under the Constitution, in order to be exempt, it is necessary only that the property shall be situated

The following provision concerning the franchise tax has apparently not been interpreted by the courts: . . . Strictly benevolent, educational, or religious corporations shall not be required to pay such a tax.[2]

Statutes. The following property shall be exempt from ad valorem taxation: (a) All bonds of the United States and of this State and all county and municipal bonds issued by counties and municipalities in this State; all property, real and personal, of the United States and of this State, and of county and municipal corporations of this State; . . . all property, real or personal, used exclusively for . . . purposes purely charitable; provided, however, that property, real or personal, . . . let for rent or hire or use for business purposes, shall not be exempt from taxation, notwithstanding the income from such property shall be used exclusively for . . . charitable purposes.[3]

No property, whether exempt by law from taxation or not, shall be exempt from the levy and sale for the payment of taxes and the fees and charges lawfully incurred in assessing and collecting taxes against the owner thereof.[4]

In computing net incomes, there shall be allowed as deductions: . . . Contributions or gifts made within the taxable year to recognized religious, charitable, and scientific or educational institutions . . . which are not operated for profit and no part of the net earning of which inures to the benefit of any private stockholder or individual . . . under the rules and regulations prescribed by the Chairman of the State Tax Commission.[5]

The following organizations shall be exempt from taxation under this act: . . . subd. 5, Corporations organized and operated exclusively for . . . charitable . . .

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in a city or a town, shall not exceed in area the limitation fixed by the Constitution, and that it shall be used directly and exclusively for schools." 1909, Anniston City Land Company vs. The State, 160 Ala. 253, 48 So. 659.

The Supreme Court following this case has held that section 91 of the Constitution of 1901 exempts cemeteries without limitation, and hence that the Legislature is without power to limit that exemption. 1910, Elmwood Cemetery Co. vs. Tarrant, 170 Ala. 459, 54 So. 186.

2 Constitution, 1901, Sec. 233.

3 General Acts, 1919, Vol. 328, p. 282.

4 General Acts, 1919, No. 328 . . . , p. 345, 207.

5 Same, No. 328, p. 379, Sec. 324.

purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual. Subd. 11, Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this act.[6]

§ 162. **ARIZONA: Constitution.** There shall be exempt from taxation all federal, state, county, and municipal property. Property of educational, charitable, and religious associations or institutions not used for profit may be exempted from taxation by law.[7]

Statutes. A statutory provision exempts "hospitals and poor houses owned by the public and other institutions for the relief of the indigent or afflicted . . . and lots or lands thereto appurtenant, with their fixtures and equipments." There has been no legal interpretation of this provision.[8]

All property of every kind and nature whatsoever, within this State, shall be subject to taxation, except . . . hospitals, asylums, and poor houses, owned by the public, and other charitable institutions for the relief of the indigent or afflicted . . . and lots or lands thereto appurtenant with their fixtures and equipments. . . .[9]

§ 163. **ARKANSAS: Constitution.** All property subject to taxation shall be taxed according to its value. . . . Provided, further, that the following property shall be exempt from taxation: Public property used exclusively for public purposes; . . . and buildings and grounds and materials used exclusively for public charity.[10]

Statutes. By statutory provision all buildings belonging exclusively to institutions of purely public charity with the land actually occupied and "not leased or otherwise used with a view to profit, and all moneys and credits appropriated solely to and belonging exclusively to such institutions," is

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[6] General Acts, 1919, No. 328, p. 379, Sec. 336.
Same, Sec. 10221, Act March 24, 1913, p. 824, Sec. 3, as amended March 23, 1915, p. 867.

[7] Constitution, Art. 9, Sec. 2.

[8] Rev. Stats., 1913, Civil Code, Title 49, Ch. IV.

[9] Arizona Rev. Stats., 1913, Civil Code, Title 48, Sec. IV. Sec. 4846, p. 1573, property exempt from taxation.

[10] Constitution, Art. 16, Sec. 5.

exempt from taxation. There is also an exemption from the inheritance tax law.[11]

All property described in this section, to the extent herein limited, shall be exempt from taxation; . . . (4) all property, whether real or personal, belonging exclusively to this State or the United States; . . . (6) all lands, houses, and other buildings belonging to any county, city, or town used exclusively for the accommodation of the poor; . . . (7) all buildings belonging to institutions of purely public charity, together with the land actually occupied by such institutions, not leased or otherwise used with a view to profit, and all moneys and credits appropriated solely to and belonging exclusively to such institutions.[12]

The following exemptions from the tax are hereby allowed: . . . (1) all property transferred in good faith to societies, corporations, and institutions now or hereafter exempted by law from taxes, or to any public corporation or to any society, corporation, institution, or association of persons engaged in or devoted to any charitable, benevolent—public, or other like work (pecuniary profit not being its object or purpose), or to any persons, society, corporation, institution, or association or persons in trust for or to be devoted to any charitable, benevolent, educational, or public purpose by reason whereof any such persons or corporation shall become beneficially entitled in possession or expectancy to any such property, or to the income thereof, shall be exempt.[13]

§ 164. **CALIFORNIA: Constitution.** All property used

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11 The constitutional exemption, however, has been held not to extend to leased property from which revenue is derived although that revenue is used wholly to support a public charity. 1893, Brodie vs. Fitzgerald, 57 Ark. 445, 22 S. W. 29.

The buildings and grounds of a Sisterhood which operates a public hospital and for which no compensation is received is within the constitutional provisions although pay patients are received, the proceeds being used to maintain the institution. 1907, Hot Springs School District vs. Sisters of Mercy, 84 Ark. 497, 106 S. W. 954.

Lands which are purchased and held by a school district solely for sale or rent and for the sake of profit are not within the provisions of the Constitution exempting from taxation "public property used exclusively for public purposes." 1896, School District vs. Howe, 62 Ark. 481.

12 Digest of Statutes (Crawford & Moses), 1921, Sec. 9858.

13 Same, Sec. 10221, Act March 24, 1913, p. 824, Sec. 3, as amended March 23, 1915, p. 867.

for free public libraries and free museums, growing crops, property used exclusively for public schools, and such as may belong to the United States, this State, or to any city or county or municipal corporation within this State, shall be exempt from taxation. . . .[14]

Statutes. All property in this State, not exempt under the laws of the United States . . . property used exclusively for public schools . . . and such as may belong to the United States, this State, or to any county or municipal corporation within this State, is subject to taxation. . . .[15] Educational institutions not conducted for profit and their grounds are exempt from taxation as in Constitution 1a, Art. XIII.[16]

All property in this State, except otherwise specified in the Constitutions of this State, is subject to taxation. Nothing in this code should be construed to require or admit double taxation.[17]

The following exemptions from the inheritance tax are hereby allowed: . . . (1) all property transferred to societies, corporations, and institutions now or hereafter exempted by law from taxation, or to any public corporation, or to any society, corporation, institutions, or association or persons engaged in or devoted to any charitable, benevolent, educational, public, or other like work (pecuniary profit not

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[14] Constitution, Art. XIII, Sec. 1, S. L. 1916. The California Supreme Court, December, 1917, stated that "It is thoroughly settled that, in the absence of constitutional restriction, the legislative power to exempt property extends to every form of taxing power including special assessments as well as general taxes." 1917, Los Angeles County Flood District vs. Hamilton, 177 Cal. 119, 169 Pac. 1028.

The property of charitable institutions supported in whole or in part by the State is exempt from taxation. 1867, San Francisco L. P. and R. Society vs. Story, 32 Cal. 65.

Statutory exemptions are included in the general revenue and inheritance tax acts. Earlier decisions have held that it is not within the power of the Legislature to exempt any species of property, however owned, from taxation. 1852, Minturn vs. Hays, 2 Cal. 590, 56 Am. Dec. 366. It was not intended by the framers of the Constitution that the Legislature should have the power to exempt any kind of property from taxation. 1872, People vs. Eddy, 43 Cal. 331, 13 Am. Rep. 143. Property will not be held exempt from taxation, unless clearly exempted by the statute. 1859, Hart vs. Plum, 14 Cal. 148.

[15] Amendment approved 1895, Stats. 1895, p. 310, Sec. 3613. California Pol. Code 1915, Sec. 3607.

[16] Same, Sec. 3613.

[17] Stats. 1917, Sec. 226, p. 427, amending Sec. 3607 of the Code.

being its object or purpose), or to any person, society, corporation, institution, or association of persons in trust for or to be devoted to any charitable, benevolent, educational, or public purposes, by reason whereof any such persons or corporation shall become beneficially entitled, in possession or expectancy, to any such property or to the income thereof, shall be exempt.[18]

§ 165. **COLORADO: Constitution.** Lots, with the buildings thereon, if said buildings are used solely and exclusively —for strictly charitable purposes—shall be exempt from taxation unless otherwise provided by general law.[19]

The property, real and personal, of the State, counties, cities, towns, and other municipal corporations and public libraries, shall be exempt from taxation.[20]

Statutes. The Legislature has incorporated the same provisions in the statutes and also provided an exemption from the inheritance tax law.[1]

The following property is exempt from general taxation: . . . Lots with the buildings thereon, if said buildings are used strictly for charitable purposes.[2]

The following classes of property shall be exempt from taxation, to-wit: Buildings used exclusively for religious worship, for schools, or for strictly charitable purposes, with the grounds whereon the same are situated.[3]

"The following transfers of property shall be exempt from the inheritance tax: . . . All transfers of property to the State of Colorado or to any county, city, town, or any other municipality, or for the use of public libraries, for

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[18] California Deering's General Laws. 1923, Act. 8443, Sec. 6, Subsec. 1. Inheritance Tax Law approved June 16, 1913, Sts. 1913, p. 1066. Amended 1915, pp. 418, 435. Under Article 1 of section 7 of the Inheritance Tax Law of 1915, foreign charitable corporations, as well as domestic charitable corporations, are exempted from the payment of the tax. 1918, Estate of Fisk, 178 Cal. 116, 172 Pac. 390.

[19] Constitution, Art. 10, Sec. 5.

[20] Same, Sec. 4.

[1] The land and the buildings thereon devoted to a corporation organized for charitable purposes, and used as a home for consumptives, are exempt from taxation under the Constitution and statute exempting real estate used for strictly charitable purposes, notwithstanding that payment is exacted from the patients for their actual necessities furnished, according to their circumstances and the accommodations they receive. 1906, St. John's Cathedral vs. Denver, 37 Colo. 378, 86 Pac. 1021.

[2] S. L. 1921, C. 200, p. 687, Sec. 5545-4.

[3] Rev. Stats. 1908, Sec. 5545, p. 1303.

religious or charitable purposes exclusively; provided, however, that the same be situated within this State, or the property be limited for use within this State.''[4]

§ 166. **CONNECTICUT: Statutes.** There is no constitutional provision for tax exemption in Connecticut.

Statutory provisions exempt from taxation ''buildings or portions of buildings and the land on which they stand, exclusively occupied as . . . infirmaries, not including real estate held in trust which is leased or used for other purposes than the specific purposes of the assessment.''[5]

The following property shall be exempt from taxation: All property belonging to the United States or this State; buildings, with their appurtenances, belonging to any county, town, city, or borough; ''buildings or portions of buildings and the land on which they stand, exclusively occupied as—public schoolhouses or infirmaries, with the land appurtenant to such infirmaries—buildings and the land on which they stand belonging to and exclusively used for scientific, literary, benevolent, or ecclesiastical societies, not including any real estate conveyed by an ecclesiastical society, or public or charitable institution without reserving an annual income or rent or by a conveyance intended to be a perpetual alienation, and not including any real estate of any educational, benevolent, or ecclesiastical corporation or association, whether held in the name of such corporation or association, or by any person or persons in trust for such corporation or association, which is leased or used for other purposes than the specific purposes of such corporation—or association—''all property of any hospital society which is supported solely or in part by state appropriations.''[6]

§ 167. **DELAWARE: Constitution.** The General Assem-

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[4] A legacy to a city or county for the erection of a hospital for the comfort of poor widows and orphan children is impliedly exempt from taxation. 1909, In re Mackey's Estate, 46 Colo. 79, 102 Pac. 1075.

[5] Conn. P. A. 1918, Sp. 1919, C. 159, p. 2802, amending Sec. 1160 of the general statutes.

[6] Connecticut P. A. 1921, C. 109, p. 3113, amending G. S. Sec. 1160, as amended 1919. Also 1851, Seymour vs. Hartford, 21 Conn. 486. By the revision of 1821 all property thereafter conveyed to charitable uses is taxable. However, as declared in First Ecclesiastical Society vs. Hartford, so long as property previously conveyed is faithfully applied to its designated use it is to remain exempt. 1826, Atwater vs. Woodridge, 38 Conn. 287.

bly may by general laws exempt from taxation such property as in the opinion of the General Assembly will best promote the public welfare.[7]

Statutes. All real and personal property, not belonging to this State or the United States or any county of the State, or any corporation created for charitable purposes and not held by way of investment, except as otherwise provided, shall be liable to taxation and assessment for public purposes. Legacies for religious, charitable, or educational purposes shall not be subject to taxation.[8]

Corporations organized for religious, charitable, scientific, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual, are exempt from the provisions of the income tax law.[9]

§ 168. **FLORIDA: Constitution.** The Legislature shall provide for a uniform and equal rate of taxation and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious, or charitable purposes.[10]

Statutes. The Legislature has by general law exempted from taxation real and personal property of benevolent, charitable, and scientific institutions "which shall be actually occupied and used by them solely for the purpose for which they have been or may be organized," but rented property and the profits thereof and property held for speculation or investment is not exempt. This is not to apply in cases where the charitable or benevolent institution uses an upper story and leases the lower stories.[11]

§ 169. **GEORGIA: Constitution.** The General Assembly may by law, exempt from taxation all public property: . . . all institutions of purely public charity; . . . provided, the property so exempted be not used for purposes of private or corporate profit or income.[12]

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7 Delaware Constitution, Art. VIII, Sec. 1.

8 Code 1915, Sec. 1098.

9 Delaware Laws 1921, C. 9, p. 27, Sec. 8, Subd. 4.

10 Constitution, Art. 9, Sec. 1.

11 Gen. Stats. 1920, Sec. 697.

12 Georgia Constitution, Art. 7, Par. 2.

Buildings erected and used as a college, incorporated academy, or other seminary of learning, are not, under the Constitution and laws of the State exempt from taxation if "used for purposes of private

Statutes. The following property is exempt from taxation: "All institutions of purely public charity, . . . provided the above described property so exempted be not

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or corporate profit or income." It seems that charges were made for certain things, caps and uniforms, entertainments, board, tuition, etc. "These charges are arbitrarily fixed, without any reference whatever to the actual cost of conducting the school and must be held, to all intents and purposes, to afford a source, if not of private profit, certainly of income to the owners. They are competing with other property in the State in the matter of deriving income, and therefore must bear their proportion of the burdens of taxation." "Public property, in the sense as used in the provisions for rendering property exempt, means property belonging to the State, or the political divisions thereof, such as counties, cities, towns, and the like . . . The property sought to be exempted not being public property, but being used as a college, . . . the controlling question upon which the case rests is, is the property used for purposes of private or corporation profit or income? The use to which the property is devoted is to be looked to, to determine whether or not it is exempt." 1898, Mundy vs. Van Hoose, 104 Ga. 299.

Public property within the meaning of the Constitution embraces only such property as is owned by the State, or some political division thereof, and title to which is vested directly in the State, or one of its subordinate political divisions, or in some persons holding it exclusively for the benefit of the State, or a subordinate public corporation. 1901, Trustees vs. City of Atlanta, 113 Ga. 883.

An educational institution charging fees for tuition was exempt because the property sought to be taxed was donated and used solely for educational purposes. There was no capital stock, there were no dividends, and the owners received no profit therefrom. All receipts were devoted exclusively to the pay of teachers, the maintenance of the institution and the repair of the buildings. 1903, Lenton vs. Cobb Institute, 117 Ga. 678.

In the case of a liquor dispensary building where liquor was kept and sold which property was held to be exempt from taxation the Court held: "The paragraph of the Constitution to which we have referred does not exempt any property from taxation, but permits the General Assembly to make such exemptions, laying down well-defined limits by which it shall be governed. The General Assembly might, if it saw fit, decline to exempt from taxation certain classes of public property, such as dispensaries, and thus bring them within the taxing power of the State. It has not seen fit, however, to make any such distinctions, but has exempted from taxation 'all public property'. That the dispensary building and liquors were public property, whether legally acquired or not, seems to us to admit of no doubt, and, as such, they were clearly exempt from taxation." 1904, Walden vs. Whighan, 120 Ga. 646.

However, the property of a corporation having capital stock formed for the "business" of conducting an educational institution, and which has the absolute ownership of all the realty and personalty employed in such enterprise, with the right to convey it at will and to make any desired disposition of the income derived from the fees charged for tuition and board, is not exempt from taxation. 1904, Brenar Association vs. Harbison, 120 Ga. 929.

Statutory exemptions relate to the general property exempting the occupation and inheritance taxes. Laws 1917, Pt. I, Title II, Taxation, p. 52; and Laws 1919, Pt. I, Title II, Taxation, p. 60 (3) (a).

used for purposes of private or corporate profit or income." . . .[13]

§ 170. **IDAHO: Constitution.** All taxes shall be uniform upon the same class of subjects within the territorial limits. . . . Provided, that the Legislature may allow such exemptions from taxation from time to time as shall seem necessary and just.[14]

Statutes. The statutory exemptions provided in the general revenue and transfer tax laws exempt from taxation: "Hospitals, with their furniture and equipment, used for benevolent purposes, with the ground appurtenant thereto and used therewith, from which no profit is derived."[15]

§ 171. **ILLINOIS: Constitution.** The property of the State, counties, and other municipal corporations, both the real and personal, and such other property as may be used exclusively for . . . charitable purposes, may be exempted from taxation; but such exemption shall be only by general law.[16]

Statutes. By statute it has been provided that all property of public charity "when actually and exclusively used for charitable purposes and not leased or otherwise used with a view to profit" is exempt.[17] There is an exemption also from the inheritance tax law.[17]

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[13] Code 1911, Vol. 1, Art. 30998, Acts 1878-9, p. 33.

[14] Constitution VII, § 5.

[15] Stats. 1919, Sec. 3099, Subd. 15.

Local Assessments are not taxes within the purview and meaning of the Constitution but a charge in rem against the specific tracts of land assessed for benefits. 1913, Elliot vs. McCrea, 23 Ida. 524, 130 Pac. 785.

[16] Illinois Constitution of 1870, Art. 9, Sec. 3.

The provision, it has been held, does not exempt any property from taxation but merely provides that the general assembly may do so by law. 1919, Cong. S. S. and Pub. Society vs. Board of Review, 290 Ill. 108, 125 N. E. 7.

[17] Jones and Addington (1913), C. 120, p. 5456, Sec. 9215, Sec. 9624.

The Supreme Court has held that a corporation is exempt which conducted a hospital and whose only source of income was from the donations and receipts from patients who were able to pay for treatment received, but which received all patients who applied, and gave free accommodations to those unable to pay, their treatment in both cases being the same except that free cases were accommodated in wards. Any regular medical practitioner could take his patient and treat him there and the institution made no profits. The institution was held to be within the statutory exemption of "all property of institutions of public charity." 1908, German Hospital vs. Board of Review, 233 Ill. 246, 84 N. E. 215.

In another case it was held that a corporation for the purpose of

§ 172. **INDIANA: Constitution.** The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation of all property, both real and

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maintaining a hospital and dispensary, a school of medicine and surgery, and a training school for nurses, which charged no tuition fee except for a post-graduate course in medicine and surgery, and then only in an amount sufficient to pay the cost of maintenance, and which received all persons within its capacity presenting themselves for treatment, regardless of whether they are able to pay the cost of their keeping and treatment, and charging those who are able to pay, was an institution of public charity within the statute exempting the property of such institutions from taxation. 1908, Board of Review vs. Chicago Polyclinic, 233 Ill. 268, 84 N. E. 220.

The employees of a charitable institution are not compelled to perform free services in order that the institution may be charitable. 1924, Yates vs. Board of Review, 312 Ill. 367, 144 N. E. 1.

Lands held by the trustees of the Illinois Industrial University belong to and are under the control of the State, when it is disposed to exercise the power, and are therefore exempt from taxation, under the act of 1853, relating to revenue. 1875, Trustees vs. Champaign County, 76 Ill. 184.

Land belonging to an institution of learning upon which the buildings or "institutions" are not located, and which is not shown to be "used exclusively" for the interest of the corporation, is subject to taxation, and is not exempt. 1883, Seminary vs. People, 101 Ill. 567. See also 1922, People vs. St. Mary's Roman Catholic Hospital of Centralia, 306 Ill. 174, 137 N. E. 865, and 1922, People vs. Salvation Army, 305 Ill. 545, 137 N. E. 430.

The Legislature may exempt certain property from general taxation but a charter exempting property from special assessments for local improvements has been held to be unconstitutional and void. 1885, Chicago vs. Union, 115 Ill. 245, 2 N. E. 254.

Property belonging to the State is not subject to special assessment or special taxation by cities or villages for making local improvements. Under section 26 of Article 4 of the Constitution the State cannot be made a party defendant in any court of law or equity. 1893, **In re** City of Mt. Vernon, 147 Ill. 359.

In order to be exempt from taxation, church property must be actually and exclusively used for public worship, the land must be owned by the church and if the congregation is not organized it cannot own the property. Without such ownership the property is not exempt. 1886, people vs. Anderson, 117 Ill. 50, 7 N. E. 625.

Premises which are separated by a public alley from the lot occupied by the church building and rectory, upon which is a building the lower floor of which is used for Sunday school, for meetings which cannot be held in the church auditorium and for the meetings of sub-organizations of the church, and the upper floor for janitor's rooms, is not exempt from taxation. 1903, **In re** Walker, 200 Ill. 566.

Where the law describes property entitled to exemption from taxation, by reference to the character of its ownership, and the nature of the use to which it is put, the property claimed to be exempt must be owned and used in the manner specified in the law. 1887, **In re** Swigert, 123 Ill. 270, 14 N. E. 32.

The Legislature has no power to exempt from taxation any property other than that enumerated in section 3, article 7 of the Constitution, such enumeration being an exclusion of other subjects of exemption. 1894, Association vs. Keith, 153 Ill. 609, 39 N. E. 1072.

A separate lot adjoining a cemetery was purchased, held, and used,

personal, excepting such only, for municipal, educational, . . . scientific, religious, or charitable purposes, as may be especially exempted by law.[18]

Statutes. The following property shall be exempt from taxation: . . . (5) every building used and set apart for educational, . . . scientific, or charitable purposes by any institution or by any individuals, associations, or incorporations or used for the same purpose by any town, township, city or county and the tract of land on which the building is situated, . . . also lands purchased with the bona fide intention of erecting buildings for such use thereon not exceeding forty acres; also personal property, endowment funds, and interest thereon, belonging to any institution, town, township, city, or county and connected with, used. or set apart for any of the purposes aforesaid, . . .[19] (16) any buildings and the lands upon which the same are situated, erected or acquired by any corporation, institution, or asso-

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not for burial purposes, but for an office and residence of the custodian of the grounds. Upon this there was a well to supply water for use in the grounds. This property did not come within the constitutional or statutory provisions exempting cemetery grounds from taxation. 1897, Bloomington Cemetery Assn. vs. People, 170 Ill. 377, 48 N. E. 905.

Municipal ownership of property is not sufficient to exempt it from taxation, the fact of its exemption depending upon whether it comes within the provisions of the statute enacted for that purpose, in conformity to the Constitution. 1898, Sanitary District vs. Martin, 173 Ill. 243, 50 N. E. 201.

It was not competent for the General Assembly, under the Constitution of 1848, to exempt from taxation property owned by educational, religious, or charitable corporations, which was not itself used directly in aid of the purposes for which the corporations were created, but which was held for profits merely, although the profits were to be devoted to the proper purposes of the corporation. 1875, Northwestern University vs. People, 80 Ill. 333.

A hospital's property being actually and exclusively used for purposes of public charity, and not leased or otherwise used with a view to profit, is exempt from taxation. 1908, Proctor Hospital vs. Board of Review, 233 Ill. 583, 84 N. E. 618.

[18] Indiana Constitution, Art. 10, Sec. 1.

The fact that a home for the care and education of orphans and homeless children, maintained by contributions from the counties and townships of the State, and by private donations, is conducted on private account, and the earnings applied to the personal benefits of the individual proprietor, does not deprive the owner of the right of exemption of property from taxation as provided for in Sec. 8412, Burns 1901. "It will be observed that the act applies to individuals as well as to private and public corporations, and that the only conditions are that the property shall be used and set apart for charitable purposes." 1902, Vink vs. Work, 158 Ind. 638.

[19] Gen. Laws 1923, Ch. 191, p. 559, amending act of March 11, 1919,

ciation, created, organized and existing exclusively for charitable purposes, which charitable purposes consist in the dispensing gratis of medicines and medical advice and aid to poor persons, pursuant to the provisions of the last will of any testator, which buildings and the land upon which the same are situated were acquired by means of any devise or bequest, or by the use or application of the proceeds of any such devise or bequest, and such building shall be occupied in whole or in part in dispensing such charity and the income of such building is used for such charitable purposes; and where any taxes may have been levied or assessed against any land or lands and the building or buildings thereon and not heretofore paid, such taxes shall not hereafter constitute or be a lien upon such property, nor shall the same in any manner constitute a claim against any such institution or association.[20]

§ 173. **IOWA: Constitution.** The Legislature is not to pass local or special laws for the assessment and collection of taxes for state, county, or road purposes,[1] and the property of all corporations for pecuniary profit shall be subject to taxation the same as that of the individual.[2]

Statutes. By statute the Legislature has provided that the property of a county, township, city, town, or school district when devoted entirely to public use and not held for pecuniary profit, is exempt from taxation and also all grounds and buildings used for associations and corporations for public use and not for private profit, for scientific, charitable, benevolent, and religious institutions and societies. This land is to be devoted solely to the appropriate objects of the institutions not exceeding one hundred and sixty acres in extent "and not leased or used with a view to pecuniary profit." All deeds or leases by which such property is held are to be filed for record before the property is exempt.[3]

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20 Indiana G. L. 1921, Ch. 4, amending Tax Laws, Sec. 5.

1 Art. 8, Sec. 2.

2 Art. 3, Sec. 30.

3 Comp. Code 1919, p. 1344, Sec. 4482, Subd. 1.

It has been held that property devised to trustees of a town in trust for the improvement of a public park, to be held as a perpetual fund for that purpose, interest and revenues only to be used, is not exempt from taxation in the hands of the trustees. To be exempt, the property in such cases must be devoted entirely to public use and not held for pecuniary profit. 1884, Mitchellville vs. Board of Supervisors, 64 Iowa 554, 21 N. W. 31.

§ 174. **KANSAS: Constitution.** The Legislature shall provide for a uniform and equal rate of assessment and taxation; but all property used exclusively for state, county, municipal, . . . benevolent, and charitable purposes . . . shall be exempt from taxation.[4]

The residence of a professor owned by a college, and a parsonage owned by a church, are so devoted to the objects of such institutions as to be exempt from taxation. 1877, Trustees of Griswold College vs. State, 46 Iowa 275. But when an officiating pastor held the title to certain lots in his own name and permitted them to be used by his church and the school connected therewith, without charges, the Court has held the property not exempt from taxation. 1882, Laurent vs. Muscatine, 591 Iowa 404, 13 N. W. 409. Property which was conveyed to a religious society as a gift, and with no conditions as to the use to which it is to be devoted, which remains vacant and unimproved at the time of taxation and sale, has been held not exempt. 1886, Kirk vs. St. Thomas Church, 70 Iowa, 396, 30 N. W. 650.

An exemption from taxation is not retroactive, exempting from prior taxes a prior liability for taxes, it exempts the property only from future liability. 1886, First Cong. Church vs. Linn County, 70 Iowa 396, 30 N. W. 650. Where lots belonging to a religious corporation are exempt, they must be devoted solely to the appropriate business of the church. In Nugent vs. Delworth, certain lots were purchased for the purpose of erecting church edifices thereon. Subsequently this plan was abandoned and the lots were mortgaged to raise money for the purchase of other property, the balance to be invested in such other property as soon as practicable. The Court here held that the property was not exempt from taxation inasmuch as there was no actual occupancy for Church purposes. 1895, 95 Iowa 49, 63 N. W. 448.

The exemption of the property of religious, charitable, and educational institutions from taxation does not create an exemption from a business or license tax. 1906, Iowa Mut. Tornado Ins. Assn. vs. Gilbertson, 129 Iowa 658, 106 N. W. 153. Where a charitable society invested certain funds in real property leased for business purposes, the proceeds being strictly applied to the proper objects of the fund, it has been held that such property was not exempt from taxation. 1881, Fort Des Moines Lodge vs. Polk County, 56 Iowa 34, 8 N. W. 687. To be entitled to an exemption as a charitable, benevolent, or religious institution it must appear that the body is such an institution, and that the property is devoted solely to the appropriate objects of such institution. The presumption is in favor of taxation and against exemption. 1900, Lucy vs. Davis, 112 Iowa 106, 83 N. W. 784. A general exemption from taxation does not relieve property from liability to special assessments for street improvements. 1896, Farwell vs. Des Moines Brick Mfg. Co., 97 Iowa 286, 66 N. W. 176. The exemption is to be strictly construed and applied only to general taxes and not to special assessment or local improvements. 1883, Cassidy vs. Hammer, 62 Iowa, 359, 17 N. W. 588.

[4] Kansas Constitution, Art. 2, Sec. 1.

Property equitably and in fact belonging to the State is exempt from taxation, no matter in what person or body is the legal title . . . 1882, Board of Regents of Kansas State Agricultural College vs. Hamilton, 28 Kansas 376.

Funds which belong to a charitable or benevolent association and which are invested by it for the purpose of drawing an income therefrom, and not "appropriated solely to sustain such association," are not exempt from the burdens of taxation. 1901, National Council

Statutes. Statutory provisions exempt property under the general revenue act and under the transfer and inheritance tax acts. The general exemption includes "all buildings and parts of buildings, belonging to . . . benevolent associations, used exclusively for . . . benevolent purposes, together with lands not exceeding five acres owned and occupied by such institutions and attached thereto, if not leased or otherwise used with a view to profit; and all books, papers, furniture, apparatus, and instruments belonging to such associations and used exclusively for scientific, literary, and benevolent purposes."[5]

§ 175. **KENTUCKY: Constitution.** There shall be exempt from taxation, public property used for public purposes; . . . institutions of purely public charity. . . .[6]

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of Knights and Ladies of Security vs. Phillips, 63 Kan. 808, 66 Pac. 1014.

The constitutional provision above quoted makes the exclusive use for the purpose designated, the test of the exemption and not mere ownership of the property. Consequently a tract of land owned by an educational institution unoccupied and unimproved is not exempt from taxation although it was intended as a permanent site for the institution. 1871, Washburn College vs. Shawnee County Coms., 8 Kan. 344.

Property to be exempt from taxation because used for educational purposes, must be used directly and exclusively for such purposes. It was insufficient that the land in question was used to raise food and produce to sell and for stock kept on the property, although the proceeds from such sale were used for educational purposes. 1872, St. Mary's College vs. Crowl, 10 Kansas 442.

A dwelling house owned by the Diocese of an Episcopal Church and used exclusively by the bishop as a residence was held not exempt from taxation. 1872, Vail vs. Beach, 10 Kan. 214. Only institutions within the State and not those of another state are exempt from taxation. 1924, Morgan vs. A. T. & S. F. Ry. Co., 116 Kans. 175, 225 Pac. 1029.

5 Gen. Stats. 1915, p. 2275, Sec. 11151.

6 Kentucky Constitution, Sec. 170.

General Stats., C. 92, Art. 1, Sec. 3, exempts from taxation "the real estate and investment devoted to public schools, seminaries, universities, colleges, etc. It has been held that it was not intended herein to include school property in use for private gain and entirely devoid of either a public or charitable character. 1890, City of Henderson vs. McCullagh, 89 Ky. 448, 12 R. 77.

A hospital incorporated by the trustees as a charitable corporation, having no capital stock and holding property for the maintenance of a hospital for the treatment of sick and disabled persons and for medical and surgical treatment and the maintenance of poor persons not able to provide it for themselves, maintained without pecuniary profit, and having funds invested the income of which was used solely in meeting its necessary expenses, was an "institution of purely public charity," whose invested fund was exempt from taxation. 1915, Mason County vs. Hayswood Hospital of Maysville, 167 Ky. 17, 179 S. W. 1050. Also 1924, Benevolent Assn. of Elks vs. Wintership, 204 Ky. 20, 263 S. W. 670.

The general revenue act exempts the property of "institutions of purely public charity."[7] The transfer and inheritance tax acts make similar exemptions.

§ 176. **LOUISIANA: Constitution.** The following shall be exempt from taxation: . . . all public property . . . all charitable institutions, . . . provided, the property so exempted be not leased for purposes of private or corporate profit or income.[8]

The Legislature shall have power to levy, solely for the support of the public schools, a tax upon all inheritances, legacies, and donations, . . . provided, bequests to educational, religious, or charitable institutions shall be exempt from this tax.[9]

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7 Stats. 1915, C. 108, Revenue and Taxation, p. 2039, Sec. 4026.

The constitutional provision includes a corporation, the beneficiaries of which are female orphan children, although pay pupils may be received since the amounts received are devoted solely to the maintenance of the school. 1890, Trustees of Ky. Female Orphan School vs. City of Louisville, 100 Ky. 470, 36 S. W. 921. The exemption includes also a theological school, the object of which does not refuse any from other denominations although the management and organization of the institution may be private and denominational. 1896, City of Louisville vs. Louisville Baptist Theological Seminary, 100 Ky. 506, 36 S. W. 995. The exemption from general taxation does not, however, exempt from municipal taxation. 1900, City of Newport vs. Masonic Temple Assn., 108 Ky. 333, 56 S. W. 405.

The Court of Appeals has held that hospital property is exempt from taxation as a public charity although certain charges are made. "The fact that the institution received a revenue from the recipients of its bounty sufficient to keep it in operation does not take from it its character as a purely public charity, where it was founded and endowed as such, and when all the receipts go to providing for the purposes for which it was erected and maintained. The municipalities and the county itself in which the institution is located and whose duty it is to care for the indigent sick of each of them, respectively, have by its use, been saved the burden of erecting an institution of their own, or otherwise caring for such sick. 1915, City of Dayton vs. Speers Hospital, 165 Ky. 56, 176 S. W. 361.

8 Constitution, Art. 230, La. Stats., Wolf 1920, Vol. III, p. 2309.

9 Same, Art. 235.

Hospitals and infirmaries whose objects are charitable are exempt from taxation, although the institutions take pay from patients who can pay. It was further held that property used for gardening by a retreat for the insane is not exempt from taxation. 1899, State vs. Board of Assessors, 52 La. Am. 233, 26 So. 872.

Property which is privately owned may by its use be dedicated to public purposes and it becomes thereby public property within the constitutional exemption of taxation. 1886, Tulane Educational Fund vs. Board of Assessors, 38 La. Am. 298.

A statute exempting property from all taxation by the State, parish, or city, will not exempt it from liability for the cost of paving sidewalks in front thereof under a valid city ordinance. The charge is not a tax. 1849, Lafayette vs. Male Asylum, 4 La. Ann. 1.

Statutes. Statutory provisions exempt charitable institutions from an inheritance tax and provide for certain fines to be applied to the support of the Charity Hospital at New Orleans.[10]

Where an organization is exempted from taxation on account of its eleemosynary character, and it subsequently rents parts of its property for corporate benefit, that part so rented becomes subject to taxation and the part used as a domicile for the organization remains exempt. 1892, Grand Lodge of Masons vs. City, 44 Ann. 659.

The proviso of the Constitution of 1898 (Art. 230 above) regarding exemptions does not take colleges and schools out of the exempting clause of the article. Institutions organized exclusively for charitable purposes are exempt from taxation, provided that they are conducted in such a way as to relieve the worthy helpless and infirm. The moment amounts are collected to provide revenues to pay large salaries or wages to favored employees or to conduct a business for income, the exemption ceases. 1890, State ex rel. Cunningham vs. Board of Assessors, 52 Ann. 223.

Vacant lots which were bought by the authorities of a church and held in private ownership, in anticipation of the increase of the city, and with the intention of possibly erecting thereon a church, school, or hospital when needed, are not exempt from taxation as a "place of public worship" or a "charitable institution," or property used for colleges or other school purposes. 1884, Enault vs. McGuire, 36 La. Ann. 804.

Louisiana has an interesting series of tax provisions which relate to the support of the Charity Hospital in New Orleans. In State vs. Fullerton, the Court held that the tax under Art. 27, March, 1843, No. 81, and which provides a fund (from such tax) for the Charity Hospital of New Orleans, being imposed exclusively on the passengers and not on the officers or crew of the vessel, is not a regulation of commerce nor yet is a usurpation of the power to regulate commerce with foreign nations and among the several states "exclusively vested in Congress, U. S. Const., Art. 1, Sec. 8, nor is it inconsistent with any law of Congress regulating commerce; nor prohibited by act of Congress of April 1, 1821, Sec. 1, that act having no further application since the admission of Louisiana into the Union." 1844, 7 Robinson's (La.) 210.

[10] In the series of cases to be quoted, the first three which were decided in 1860, 1876, and 1879, the use of property for revenue purposes does not permit exemption from taxation.

The property in the first case was occupied as a store and gave yearly rents of $5,500. "These are used for the support of the synagogue and its charities toward unfortunate persons of the Jewish persuasion. It is evident, then, keeping in view the distinction laid down upon this subject, . . . that this property, although free from taxation previously to the charter of 1856, has since become subject to be taxed by municipal authorities. 1860, New Orleans vs. Congregation of Dispersed Judah, 15 La. Ann. 389.

Property belonging to a church association but which was rented as stores, ball rooms, or theaters was held not to be used for church, school, or charitable purposes and consequently not exempt from taxation within the Constitution. 1876, New Orleans vs. St. Patrick's Hall, 28 La. Ann. 512.

The fact that rents and revenues of property owned by a charitable corporation are devoted to the charitable purposes for which the corporation was organized has been held not to exempt the property from taxation. "It is only, when the property itself is actually and

§ 177. **MAINE: Constitution.** No constitutional provision is made for the exemption of hospitals or charitable institutions from taxation. This is done, however, by statute as in the general revenue act, the inheritance and succession tax acts.

Statutes. The following property is exempt from taxation by statute:

The property of the United States and this State and the property of any public municipal corporation of this State appropriated to public uses. . . .

Corporations whose property or funds in excess of their

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directly used for charitable purposes that the law exempts it from taxation." 1879, New Orleans vs. St. Ann's Asylum, 31 La. Ann. 292.

The laws in existence at the time of the Constitution of 1868 exempted **all** the property of the Poydras Asylum from municipal taxation, without discrimination. This was not repealed or affected by article 118 of the same Constitution which provided that "the General Assembly shall have power to exempt from taxation property **actually used** for church, school, or charitable purposes." All property of the Asylum was held to be exempt from municipal taxation, whether yielding an income, or simply used for the purposes of an asylum. 1881, City vs. Poydras Asylum, 33 La. Ann. 851.

The United States Supreme Court held that an Act of the General Assembly incorporating an asylum and which exempts all property, real and personal, belonging to the institution from all taxation by the State, parish, or city in which it is situated, any law to the contrary notwithstanding is a contract and that all property was exempt from taxation. The question here was whether certain property, a cotton press, devised to the association twenty years after the institution was incorporated, the revenues from which were applied to the conduct of the institution, was exempt. 1881, Asylum vs. United States, 105 U. S. 362.

This was applied and all property taxed such as stores owned by the New Orleans Female Orphan Asylum, and rented for revenue and which was exclusively used for the charitable purpose of maintaining the asylum, as well as to property actually used and occupied as an asylum. 1885, New Orleans Female Asylum vs. Houston, 37 La. Ann. 69.

The same question of exemption came up later in the case of Grand Lodge F. & A. Masons vs. City of New Orleans, 46 La. Ann. 717, 1894. It was there held that property leased for revenue purposes was not exempt from taxation. Public property and revenues are not within this provision because the State for obvious reasons does not impose taxes upon its own property and revenues. The property was held to be exempt. The case was taken into the federal courts where the United States Supreme Court held that the legislative act exempting a hall from state and parish taxation "so long as it is occupied as a Grand Lodge of the F. & A. Masons" did not constitute a contract between the State and the complainant but was merely a "continuing gratuity which the Legislature was at liberty to terminate or withdraw at any time." The ground floor of the exempted property was used for stores, the income being devoted to charitable purposes of the lodge. 1897, Grand Lodge vs. New Orleans, 166 U. S. 143.

ordinary expenses are held for the relief of the sick, . . . or benevolent and charitable corporations . . . without regard to the sources from which funds are derived or to limitations in the classes of persons for whose benefit they are applied; but so much of the real estate of such corporations as is not occupied by them for their own purposes, shall be taxed in the municipality in which it is situated.[11]

All property which by the articles of separation is exempt from taxation, the personal property of all literary and scientific institutions; the real and personal property of all benevolent and charitable institutions incorporated by the State; the real estate of all literary and scientific institutions, occupied by them for their own purposes or by any officer thereof as a residence. Property or funds held in excess of the needs of the institution or association and not occupied by them for their own purposes, are to be taxed in the municipality in which situated.[11]

All property, except to or for the use of any educational, charitable, religious, or benevolent institution in this State, shall be subject to an inheritance tax.[12]

§ 178. **MARYLAND**: The exemption of buildings, equipment, and furniture of hospitals, asylums, charitable or benevolent institutions, and of grounds appurtenant thereto and necessary for the respective uses thereof, has been brought about by statutory enactment in the General Revenue Act and the Inheritance Tax Act.[13] Property held for future use may be exempt for two years.[14]

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11 Maine R. S. 1916 C. 10, p. 227, Sec. 6.
12 Maine 1919 Laws, C. 187, p. 212.
13 Code 1914, Art. 81, p. 829, Sec. 4.
14 Laws 1922, Ch. 193, p. 45.
The inheritance tax act has been upheld not as a tax upon property but on the right of succession. 1913, Washington County Hospital vs. Mealey's Estate, 121 Md. 274, 88 Atl. 136. This act has been held to apply to property within the State although the decedent who bequeathed it resided in another State. 1889, State vs. Dalrymple, 70 Md. 294, 17 Atl. 82.
It has been held that the reception of paying scholars by a school or institution erected and conducted as a hospital, asylum, or charitable and benevolent institute, so long as the income therefrom was all consumed in sustaining the benevolent objects of the institution, and the school was but a means to that end, does not exempt such property which is a source of revenue from assessment. If on the

There shall be exempt from valuation and assessment for the purpose of state, county, and municipal taxation—any bonds, notes, and certificates of indebtedness of any kind and stocks of foreign corporations which are held as a part of the endowment of any incorporated hospital, asylum, or educational institution of this State, no part of the net earnings of which inures to the benefit of any private stockholder or member, and which are or shall be the gifts of, or are or shall be investments or re-investments of funds or other securities which are or shall be the gift of any person who is a non-resident of this State, or of any corporation not chartered by this State to any such hospital, asylums or educational institutions of this State, to enable it to carry on or to extend its charitable or benevolent objects, or to promote public education or the advancement of knowledge by scientific investigation, and research.[15]

§ 179. **MASSACHUSETTS: Statutes.** In Massachusetts the exemption from taxation is statutory in character incorporated in the general revenue act and in the inheritance and succession tax acts. The personal property of benevolent, charitable, and scientific institutions incorporated within the State and the real estate occupied by them is to be exempt from taxation. Such property is not exempt if the income or profits are divided among stockholders or members or if used or appropriated for other than charitable purposes. Nor is the property to be exempted if owned or occupied in whole or in part as an insane asylum, hospital, or institution

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other hand, the property is indivisible so that the value of the several parts cannot be ascertained, the amount of the net income from the academy or school might be capitalized as the basis of assessment, 1877, Commissioners of Frederick County vs. Sisters of Charity, 48 Md. 34.

The property of the State Hospital for the Insane has been held to be not liable to assessment for the cost of opening a public road. 1884, Baltimore County vs. Maryland Hospital for the Insane, 62 Md. 127.

In an earlier case it was held that city, state, and railroad stocks held by a charitable corporation are not exempt from taxation although the income is devoted to the purposes of the organization. The tax exemptions are to be strictly construed and in the statutory provisions there was no word covering endowments. 1878, Tax Court vs. St. Peter's Academy, 50 Md. 343.

15 Maryland Laws 1920, C. 409, p. 705, amending Art. 81, Anno. Code, Sec. 4-A.

for the insane, or for the treatment of mental or nervous diseases, unless at least one-fourth of all property so occupied wholly or partly, on the basis of the valuation thereof, and one-fourth of the income be used and expended entirely for the board, lodging, and other direct benefit of indigent insane persons or indigent persons in need of treatment for mental diseases as resident patients without any charge therefor to such persons directly or indirectly.[16] Institutions whose property is exempt are to report annually to the State Board of Charity.[17]

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16 Mass. 1914, C. 518, p. 461, amending 1909, C. 490, Pt. 1, Sec. 5.

17 R. S. 1908, Supp., p. 651, Ch. 84, also Acts 1923, C. 271.

In the opinion of the Justices, property which has been taken and held for public use need not be taxed in order to make taxation proportional and equal. 1907, 195 Mass. 607, 84 N. E. 499. An animal hospital has been held to be exempt from taxation as a "benevolent and charitable institution" within the meaning of the public statutes. 1886, Mass. Society for the Prevention of Cruelty to Animals, 142 Mass. 24, 6 N. E. 840. The burden of proving exemption is on the tax payer, however, to show clearly and unequivocally that the property is within the terms of exemption. 1914, Boston Lodge vs. Boston, 217 Mass. 176, 104 N. E. 453.

Chapter 518, Sec. 1, providing that the real and personal property of charitable corporations, occupied as an insane asylum, . . . shall not be exempt from taxation unless at least one-fourth of such property is used for the treatment of indigent insane persons, etc., as resident patients without charge, is not invalid as creating an irrational, oppressive, arbitrary, or unequal classification in fact which includes only two corporations. 1921, Mass. Gen. Hospital vs. Belmont, 238 Mass. 396, 131 N. E. 72.

In the case of Old South Association vs. City of Boston, it was held that an exemption from taxation both of the land upon which the meeting house stands and of the land adjacent to it continues so long as the meeting house is preserved and used for the purposes of the charter, although the corporation puts the adjacent land to other uses which are not inconsistent with those purposes and which by yielding revenue may promote them. 1912, 212 Mass. 299, 99 N. E. 235.

But when a lodge was incorporated as a charitable and benevolent institution, owning a building in which it maintained a club for the social enjoyment of its members and where it was shown that the dominant use was that of a private clubhouse rather than for the headquarters for the dispensation of charitable relief, the Court has held that such real estate was not exempt from taxation as owned and occupied by a charitable institution for which purpose it was incorporated. The purposes stated in the charter and constitution of the lodge were charitable, and it performed many charitable functions, but it was shown in the opinion of the Court that $8,000 was expended for relief of members while the total receipts were nearly $88,000. The dominant use was plainly of a private club rather than headquarters for the dispensation of charitable relief. 1914, Boston Order of Elks vs. Boston, 217 Mass. 176, 104 N. E. 467.

A charitable corporation is not entitled to an exemption from taxation even if its real estate both is owned by it and is occupied for the charitable purposes for which it was incorporated. This

§ 180. **MICHIGAN: Statutes.** The exemption of property in Michigan is by statutory provision. A provision of the General Revenue Act exempts real and personal property owned and occupied by benevolent, charitable, and scientific institutions incorporated under the laws of the State "with the buildings and other property thereon which occupied them solely for the purposes for which they were incorporated."[18]

The following personal property is to be exempt from taxation, to-wit: First, the personal property of benevolent, charitable, educational, and scientific institutions incorporated under the laws of this State: **Provided,** that such exemptions shall not apply to secret or fraternal societies but the personal property of all charitable homes (moneys, annuities, goods, chattels, credits, shares, etc.), shall be exempt.[19]

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occupation includes more than simple ownership and possession, and its nature must be such as to contribute immediately to the promotion of the charity for which the corporation was created by "physical participation in forwarding the corporation's beneficent objects." 1917, Babcock vs. Morse Home, 225 Mass. 418, 114, N. E. 711.

All real estate occupied by the institution or its officers and intended for and in fact appropriated to these purposes by its officers, in the absence of anything to show abuse or otherwise impeach their discretion is exempt from taxation. 1869, Massachusetts General Hospital vs. Inhabitants of Somerville, 101 Mass. 319.

The exemption includes real estate purchased by such institutions, upon which, as soon as purchased, the corporation begins, and until the assessment of the tax complained of, is diligently proceeding to erect a building to be occupied for such purposes. 1873, New England Hospital for women and Children vs. City of Boston, 113 Mass. 518.

But the fact that a benevolent or charitable corporation intends at some indefinite future to occupy land owned by it, for the purposes for which it was incorporated, does not exempt the land from taxation under Gen. Stats., C. 11, Sec. 5. 1880, Boston Society of Redemptionist Fathers vs. City of Boston, 129 Mass. 178.

1919, New England Sanitarium vs. Inhabitants of Stoneham, 233 Mass. 171, 124 N. E. 29.

1919, Massachusetts General Hospital vs. Belmont, 233 Mass. 171, 124 N. E. 29.

18 Comp. Laws, Secs. 4001, 4003.

19 P. A. 1921, No. 297, p. 555, amending previous 1893, Sec. 9.

Where the charges collected are not more than those required for its successful maintenance, a sanitarium association was sufficiently charitable in character to permit its exemption from taxation. 1904, Michigan Sanitarium and Benevolent Assn. vs. City of Battle Creek, 138 Mich. 676, 101 N. W. 855.

It was not enough, in order to render an association exempt from taxation, that one of its direct or indirect purposes or results is benevolence, charity, education, or the promotion of science, but it must be organized chiefly if not solely, for one or more of these objects. 1897, Attorney General vs. Detroit Common Council, 113 Mich. 388.

All property which is held by the regents of the University of

§ 181. **MINNESOTA: Constitution.** The constitutional provision requires that "public hospitals and institutions of purely public charity . . . shall be exempt from taxation."[20]

Statutes. The statutes exempt from taxation all public schoolhouses, academies, colleges, universities, and seminaries "and the grounds attached to such buildings necessary for their proper occupancy, use, and enjoyment, and not leased or otherwise used with a view to profit."[1]

Michigan in their corporate capacity has been held by the Court to be exempt from taxation as "public property of the State." 1890, Auditor General vs. Regents of University, 83 Mich. 467.

A corporation organized "to establish, maintain, and conduct a seminary of learning," the actual business of which has been the maintenance of such a seminary, with the usual studies pursued in such institutions, is not taxable for its realty occupied by its school buildings. The fact that an institution of this sort has at one time declared a dividend does not destroy its exemption from taxation, the remedy for such misuse of its funds being by direct proceedings to restrain and punish the corporate abuse. 1889, Detroit Home and Day School, 76 Mich. 521. See also, 1924, Petition of Fuller (Mich.), 197 N. W. 552.

[20] G. S. 1913, Ch. 11, Sec. 1970, Subd. 3.

It has been held that a charitable corporation maintaining a hospital and owning a farm from which it derives an annual income which is applied to the relief of charity patients, but which is not a part of the curtilage of the hospital, and which is not essential or necessary to operate the same, is not exempt. 1905, State vs. St. Barnabas Hospital, 95 Minn. 489, 104 N. W. 551. Also, 1923, State vs. Carleton College, 154 Minn. 280, 191 N. W. 400.

Institutions organized for purposes of public charity are not exempt from paying special assessments for local improvement, although exempt from general taxation. 1898, Washburn Memorial Orphans' Asylum vs. State, 73 Minn. 343. 76 N. W. 204. Earlier cases held contra. 1887, Oakland Cemetery Assn. vs. City of St. Paul, 36 Minn. 529, 32 N. W. 781, etc.

The exemption of public burying grounds does not depend upon the character of the owner but upon whether the property is in fact a public burying ground. 1923, State vs. Crystal Lake Cemetery Assn., 155 Minn. 187, 193 N. W. 170.

[1] General Statutes, C. 11, Sec. 5.

The mere use and occupancy of premises for educational purposes by a school or seminary, under a lease from the owner, do not entitle him to claim the benefit of exemption. State vs. Bell, 43 Minn. 344, 45 N. W. 615.

Exemption given in laws 1854, C. 43, incorporating "Hamlin University of Minnesota," and which provided that "all corporate property belonging to the institution, both real and personal, is and shall be free from taxation," applies to all property of the corporation which it lawfully might acquire and hold under the terms of the act, and is not limited to property actually used and occupied by it as a site for the University. 1891, State vs. Hamlin University, 46 Minn. 316, 48 N. W. 119.

§ 182. **MISSISSIPPI: Statutes.** There are no constitutional exemptions. All property, real or personal, whether belonging to religious or charitable or benevolent organizations, which is used for hospital purposes, and which maintains one or more wards that are for charity patients, and where all the income from said hospital is used entirely for the purpose thereof, and no part of the same for profit, shall be exempt from all taxation, both ad valorem and privilege.[2]

All the property, real and personal, and the revenues derived therefrom belonging to any religious or charitable society, where no dividends are declared and where the revenues thereof are used for fraternal and benevolent purposes, shall be exempt from all state, county, and municipal taxes.[3]

All property transferred in good faith to societies, corporations, and institutions now or hereafter exempted by law from taxes, or to any public corporation or to any society, corporation, institution, or association of persons engaged in or devoted to any charitable, benevolent—public or other like work (pecuniary profit not being its object or purpose), or to any person, society, corporation, institution, or association of persons in trust for or to be devoted to any charitable, benevolent . . . a public purpose, by reason whereof any such person or corporation shall become beneficially

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Lands used in connection with the hospital as a garden, solely for the convenience of the hospital and not for profit have been held exempt from taxation. 1881, Hennepin County vs. Brotherhood of Gethsemane, 27 Minn. 460, 8 N. W. 595.

A college erected houses as places of residence for the professors of the faculty on college land and near the other buildings, that such premises might be exempt. About 200 acres of college land which was swampy and covered with forest trees, never having been improved and used, was held in the same way to be not now exempt from taxation although it was intended to use the land for college purposes later. 1892, Ramsey County vs. McAlester College, 51 Minn. 437, 53 N. W. 704.

It has been held that the endowment funds of an educational institution which are invested, the income being used exclusively for the maintenance and support of the institution, are within the constitutional exemptions. 1903, State vs. Bishop of Seabury Mission, 90 Minn. 92, 92 N. W. 882.

[2] Gen. Laws 1922, Ch. 134, p. 121.

[3] Laws 1900, Ch. 52, Hemingway's Anno. Code 1917, 6883.

entitled in possession or expectany to any such property or to the income thereof, shall be exempt.[4]

§ 183. **MISSOURI: Constitution.** Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre and lots one mile or more distant from such cities and towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for purposes purely charitable.[5]

Statutes. By statute exemption is provided in the general revenue, the inheritance tax act, the collateral inheritance tax act, and the income tax act.[6]

§ 184. **MONTANA: Constitution.** The property of the United States, the State, counties, cities, towns, . . . and such other property as may be used exclusively for . . . hospitals not used or held for private or corporate profit, and institutions of purely public charity may be exempt from taxation.[7]

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4 Mississippi Laws, 1918, C. 109, Inheritance Tax, Sec. 9.

Rented property not exempt. 1924, Senter vs. City of Tupelo, 136 Miss. 269, 101 So. 372.

5 Constitution Art. 10, p. 118, Sec. 6.

The constitutional provision as to the exemption of charities has been held to apply only to property taxes and the constitutionality of the collateral inheritance tax act was upheld. 1901, State vs. Henderson, 160 Mo. 190, 60 S. W. 1093.

6 R. S. 1909, C. 117, Art. 1, p. 3507, Sec. 11335, and Inheritance Tax Laws 1917, p. 117, Sec. 4; Income Laws 1917, p. 529, Sec. 8, Subsec. 6.

An educational corporation cannot receive property, and hold it under a shield of exemption from taxation when used for any other than its corporate purposes. It is only to the extent that the property is devoted to other than educational purposes that it is not exempt from taxation. 1903, State vs. Westminster College, 175 Mo. 52.

Although property may be exempt from taxation generally, it is still liable for special assessments for street paving, sewers, etc., even under a provision exempting it from taxation of every kind. 1903, Kansas City Expo. Duny Park vs. Kansas City, 174 Mo. 425.

Merely because a hospital organized for charitable purposes receives pay patients, when any profit derived therefrom is applied exclusively to the charitable purposes of the institution, does not exclude it from the exemption of property purely charitable. 1881, State vs. Powers, 74 Mo. 476, affirming 10 Mo. App. 263.

Where the charter of a hospital association provided that its property should be exempt from taxation, this did not cover assessments against its property made by a municipal corporation for the improvement of streets fronting such property. 1872, Sheehan vs. Good Samaritan Hospital, 50 Mo. 155.

7 Constitution Art. XIX, Sec. 2.

Statutes. Statutory exemptions have been enacted in the general revenue act to include hospitals "not used or held for private or corporate profit, and institutions of purely public charity, . . . but no more land than is necessary for such purpose is exempt."[8]

All property transferred to the State or any of its institutions or municipal corporations within the State for strictly county, city, town, or municipal purposes, or to corporations or voluntary associations of this State organized under its laws solely for religious, charitable, or educational purposes, which shall use the property so transferred exclusively for the purposes of their organizations within the State, is totally exempt from the operation of the inheritance tax law.[9]

§ 185. **NEBRASKA: Constitution.** "The property of the State, counties, and municipal corporations, both real and personal, shall be exempt from taxation, and such other property as may be used exclusively for . . . charitable purposes, may be exempted from taxation, but such exemption shall be only by general law."[10]

Statutes. The general revenue tax act uses the same phraseology exempting "such property as may be used exclusively for . . . charitable purposes."[11]

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[8] Rev. Code 1907, Part III, Title XII, C. 1, p. 736, Sec. 2499.

A school building which is exempt from taxation "as long as it is used only for the purpose of education" is not made taxable by the renting of a room therein for other purposes, where the proceeds thereof are used exclusively for the benefit of the school. 1882, North St. Louis Gymnastic Society vs. Hudson, 12 Mo. App. 343 affd., 85 Mo. 32.

[9] Montana L. 1921, C. 14, Sec. 4-1; S. L. 1923, Ch. 65, p. 145, Sec. 4-1.

It has been held in Montana that a purely charitable public association or corporation is not exempt from the payment of taxes but only such of its property as is used exclusively for charitable purposes is exempt. A mere intention of such institution to use its property for charitable purposes at some time in the future is insufficient to entitle it to exemption. 1893, Montana Catholic Missions vs. Lewis and Clark Co., 13 Mont. 563, 35 Pac. 2.

[10] Constitution of 1875, p. 135, Anno. Stats. 1911, Sec. 622.

[11] Anno. Stats. 1911, C. 49, p. 3512, Sec. 10912.

Property used directly, immediately, and exclusively for religious purposes is exempt from taxation without regard to the question of absolute ownership. 1900, Scott vs. Society of Russian Israelites, 59 Neb. 571, 81 N. W. 624. On the other hand, in a case involving property of the Young Men's Christian Association it was held that the portion of certain property occupied for business purposes was not used exclusively for education, charitable, and religious work, and, therefore, not exempt from taxation, under the revenue laws of the

§ 186. **NEVADA: Constitution.** Taxation is to be uniform . . . "excepting such property as may be exempted by law for . . . charitable purposes."[12]

All real property, and possessory rights to the same, as well as personal property in this State, belonging to corporations now existing or hereafter created shall be subject to taxation, the same as property of individuals: Provided, that the property of corporations formed for municipal, charitable, . . . purposes may be exempted by law.[13]

Statutes. The general revenue act and the corporation law contains specific exemptions for charitable societies, institutions or corporations. All property of every kind and nature whatsoever, within this State, shall be subject to taxation except: Subd. 4, the funds, furniture, paraphernalia, and regalia owned by any lodge . . . or . . . any other similar charitable organization, or by any benevolent or charitable society, so long as the same shall be used for the legitimate purposes of such lodge or society, or for such charitable or benevolent purposes: **Provided,** that such exemption shall in no case exceed the sum of $5,000 to any one lodge, society, or organization.[14]

The property on which said asylum or institution building stands, together with said buildings, shall, while occupied for the objects and purposes thereof, be exempt from taxation.[15]

§ 187. **NEW HAMPSHIRE: Constitution.** It shall be the duty of the Legislature and magistrates, in all future periods of this government, to cherish the interest of literature and sciences, and all seminaries and public schools: . . . to countenance and inculcate principles of humanity and gen-

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State. 1900, Y. M. C. A. of Omaha vs. Douglas County, 60 Neb. 642, 83 N. W. 924. Property used exclusively as an institution of learning is not subject to taxation while thus used. 1887, Omaha Medical College vs. Rush, 22 Neb. 449. See also, 1922, **In re** St. Elizabeth's Hospital, 109 Neb. 104, 189 N. W. 981.

The exemptions of the constitution apply solely to general taxes and not to special assessments. 1894, Beatrice vs. Brethren Church, 41 Neb. 358, 59 N. W. 932.

[12] Rev. Laws 1912, Const. Art. X, p. 105, Sec. 352.

[13] Same, Art. 8, p. 102, Sec. 339.

[14] Nevada Rev. Laws 1912, p. 1045, Revenue Act, Sec. 3621.

[15] Nevada Rev. Laws 1912, p. 401, **Corporations,** Sec. 1396.

eral benevolence, public and private charity . . . and all social affections and generous sentiments among the people.[16]

Statutes. A general statutory provision exempts improved or unimproved real estate, used for public purposes, almshouses,[17] etc., or legacies and inheritances.[18]

Towns and cities are authorized to exempt from taxation real estate now owned by charitable societies.[19]

The personal property of institutions devoted to . . . charitable and religious societies . . . incorporated within this State, and the real estate owned and occupied by them . . . shall be exempt from taxation, **provided** none of the income or profits of the business of such corporations or institutions is divided among the stockholders or members, or is used or appropriated for other than . . . charitable or religious purposes, and **provided further,** that in each case such exemption is limited to $150,000. Towns are hereby authorized to increase same to such an amount as they may vote, by a majority of those present at any regular town meeting; acting under an article duly incorporated in the warrant for said meeting: And cities are authorized to increase such exemptions to such an amount as the city government may vote and the mayor approve.[20]

Legacies and inheritances, except to institutions, societies, or associations of public charity in this State, or for or upon trust for any charitable purpose in the State, . . . shall be subject to a tax of 5% of their value, for the use of the State. An institution or society shall be deemed to be in this State, . . . when its sole object and purpose is to carry on charitable . . . work within the State, but not otherwise.[1]

Towns and cities are authorized to exempt from taxation real estate now owned by charitable societies which have established and maintained homes for dependent children or indigent aged people, where the incomes of said real estate

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16 Constitution Act 82 (83), inserted 1877. Public Statutes, 1901, p. 145.

17 N. H. P. S. 1901, Title 9, C. 55, Sec. 2.

18 L. 1919, C. 37, Sec. 1.

19 Laws 1915, C. 135, p. 194, Sec. 2.

20 Laws 1913, Ch. 115, Sec. 1; P. S. Supp. 1901-1913 following, Sec. 14.

1 New Hampshire Laws 1919, C. 37, Sec. 1, amending C. 40, Laws 1905.

is devoted solely to the support of such homes, provided exemption is limited to $150,000.[2]

§ 188. **NEW JERSEY: Constitution.** Property shall be assessed for taxes under general laws, and by uniform rules according to its true value.[3]

Statutes. The following property is exempt from taxation under this act: Subd. 4—All buildings actually and exclusively used in the work of associations and corporations organized exclusively for . . . religious, charitable, or hospital purposes, or for one or more such purposes . . . and the land whereon any of the buildings . . . are erected, and which may be necessary for the fair enjoyment thereof, and which is devoted . . . to no other purpose, and does not exceed five acres in extent: the furniture and personal property in said building if used in and devoted to the purposes above mentioned, provided, however, that all buildings or lands on which they stand or the associations, corporations, or institutions using or occupying the same . . . are not conducted for profits. The exemption, however, is extended to "cases where the charitable, benevolent, or religious work therein carried on is supported partly by fees and charges received to or on behalf of beneficiaries using or occupying the said building, **provided,** the building is wholly controlled by and the entire income therefrom is used for said charitable, benevolent, or religious purposes": and provided only that it apply only to associations, corporations, or institutions organized under the laws of this State. All endowments and funds held and administered exclusively for charitable, benevolent, religious, or hospital purposes within the State are exempted.[4]

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[2] N. H. Laws 1915, Ch. 135, p. 194, amending C. 115, Laws 1913.

[3] Constitution LXXXV, Art. IV, Sec. 7, Par. 12.

The above constitutional provision has been held to be self-executing and went into effect immediately upon the adoption of the amendment. 1876, Bank vs. Newark, 39 N. J. L. 380. 1902, Cooper Hospital vs. Camden, 68 N. J. L. 699, 54 Atl. 419, etc. This paragraph then abrogated all prior special and local laws, except those which were held irrepealable contracts as 1888, Sisters of St. Elizabeth vs. Chatham Tp., 51 N. J. L. 89, 16 Atl. 225. It was held later, however, that this charter was not an irrepealable contract since the facts did not show the charter in question to have been accepted. 1902, Cooper Hospital vs. Camden, 68 N. J. L. 691, 54 Atl. 419, which reversed an earlier case, 1902, 68 N. J. L. 208, 52 Atl. 210.

[4] N. J. Acts 1921, C. 320, p. 892 amending Act of 1918, Sec. 203.

The following property is to be exempt from taxation: . . . the funds of all charitable and benevolent institutions and associations collected and held exclusively for the sick and disabled members thereof, . . . and all endowments and funds held and administered exclusively for charitable . . . or hospital purposes within this State.[5]

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[5] N. J. Laws 1919, C. 47, p. 89.

In order to be within the exemption of a "charitable institution" it must appear that its property is charitable within the doctrine of charitable uses. It is not sufficient to show the incorporation of the institution but it must be shown "that the property is in fact devoted to such purposes, and has an educational character." 1904, In re Landis Estate, 66 N. J. Eq. 291, 56 Atl. 1039. See also, 1922, Seaside Home vs. State Board of Taxes (N. J.), 118 Atl. 705.

Since an exemption is in derogation of sovereign authority and common right, it "must invariably be construed strictly against the grantee." 1907, Sisters of Charity vs. Corey, 73 N. J. L. 699, 65 Atl. 500.

Where a special act or provision grants exemption from taxation, a subsequent constitutional amendment will control such exemption except in the case of a contract which the amendment of the original law could not reach. 1888, State vs. Chatham (N. J.), 16 Atl. 225.

This case was in fact reversed by Sisters of Charity vs. Township of Chatham. That decision (1888, State vs. Chatham (N. J.), 16 Atl. 225), so far as the holding of the Court concerning the "intrinsic force of the amendatory provision of the Constitution" was said, to be wholly indisputable. (1890, State vs. Chatham (N. J.), 20 Atl. 292.) Notwithstanding this concurrence, the Court allowed the exemption of property through a clause in the general tax act (Rev. p. 1152, Sec. 5, Subd. 2), which exempts property devoted to charitable use, adding certain limitations. The Court adds that the character of the institution is clearly charitable, by the express provision of the charter and that "to tax this establishment is, in fact, to tax the sick and destitute. In our opinion the statute is a preventive to a course of action so impolitic and deplorable." The Court adds that such exemption should be construed liberally and in view of its object and spirit. 1890, 52 N. J. L. 373, 20 Atl. 292.

Sisters of Charity of St. Elizabeth vs. Corey continues the discussion. Virtually the same property was under discussion and the Court there made the distinction of land on which the building was originally erected and land subsequently purchased, and, if the tract upon which the building was originally purchased, then, "is it (the land) all necessary for the fair enjoyment of the building? Lands which do not meet the double test cannot escape taxation." Lands purchased after the erection of the original building and upon which no buildings were subsequently erected, were not exempt. It was also held that the exemption should be strictly construed. 1907, 76 N. J. L. 699, 65 Atl. 500.

The most recent of this series of cases is that of Board of Chatham vs. Sisters of Charity of Saint Elizabeth. The local authorities plotted the tract of land as of two parts, apparently the distinction suggested in 1907, Sisters of Charity vs. Corey, 65 Atl. 500, but the Court points out that there is no physical reason for so considering it, the ownership being unbroken. The Supreme Court and the State Tax Board seem to have treated it as one tract and not subject to the rule above stated. The claim for exemption was rested on its exemption because

§ 190. **NEW YORK:**

The exemption here is by general statute or by act incorporating the institution.[6]

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devoted to charitable use ("all buildings actually used for schools . . . or for religious purposes . . . or for one or more such purposes, not conducted for profit"). 1918, N. J. L. 409, 105 Atl. 204.

A series of cases concerning the contractual nature of a charter exemption involved also the liability for certain sewer taxes assessed. 1899, Cooper Hospital vs. Burdsall, 63 N. J. L. 85, 42 Atl. 853, set aside the taxes. This holding followed, 1890, Sisters of Charity vs. Chatham Tp., 52 N. J. L. 373, 20 Atl. 292, and was in turn followed by 1902, Cooper Hospital vs. City of Camden, 68 N. J. L. 208, 52 Atl. 21, which states: "The constitutional amendment adopted in September, 1875, requiring that property should be assessed for taxes under general laws, did not relate to the assessments for special benefits. But that amendment did annul the exemption from ordinary taxation granted to the prosecutor by its special charter, and hence it must now find its exemption therefrom in some general law. According to the decision of this Court in 1899, Cooper Hospital vs. Burdsall, 63 N. J. L. 85, 42 Atl. 853, such an exemption is discoverable in the tax act of May 16, 1894 (3 Gen. St., p. 3320). As the same law was in force when the present taxes were levied, we must in pursuance of that decision hold the taxes illegal." The Court of Errors and Appeals overruled the two preceding cases just cited in the case of 1903, Cooper Hospital vs. Camden, 68 N. J. L. 691, 54 Atl. 419. The hospital claimed exemption here on two grounds: 1, an irrepealable contract in its charter; 2, under the General Tax Act. The Court said that no contract was shown and, further, that mere ownership by a charitable institution does not exempt; the exemption depends upon its actual devotion to the works of charity. The real estate was held not exempted by the general tax act of 1894. The following year the Supreme Court upheld a tax on certain lands remote from the institution and rented. 1904, Cooper Hospital vs. Camden, 70 N. J. L. 478, 57 Atl. 260. In the opinion of the Court, real estate "to be within the exemption must be held or used for the purpose of erecting hospital buildings thereon."

Land, owned by a charitable organization, the improvements whereof had been totally destroyed by fire, leaving the land unoccupied and unused, was not land "actually used for charitable purposes" so as to exempt such property from taxation. "Use is the dominant factor upon which exemptions of this character are based, and to bring the use within legislative contemplation it must be based upon a use of the entity, and cannot be applied to any severance of a freehold, by which the building or the land may be severally and independently exempted." 1918, Y. W. C. A. vs. Monmouth Tax Board, 92 N. J. L. 330, 105 Atl. 726.

The exemption may apply to land held by a corporation of another state. 1916, Danville Township vs. St. Francis Sanitarium, 87 N. J. L. 293, 98 Atl. 254.

6 The Vassar Brothers' Hospital was incorporated by the laws of New York, 1882, C. 298. Sec. 3 of this act provides for the exemption of so much of the real estate as is occupied for the purposes of the hospital and all its property. In Sec. 5 the power to receive grants, donations, and bequests in support of the hospital is given. The hospital has been held to be exempt from the collateral inheritance act (Laws 1887, C. 713), under a provision of that act which exempts from its operation the societies, corporations, and institutions now

Statutes. The real property of a corporation or association organized exclusively for . . . charitable, benevolent, hospital, infirmary . . . purposes . . . or for two or more such purposes, and used exclusively for carrying out . . . such purposes, and the personal property of any such corporation shall be exempt from taxation. But not if any officer, member, or employee thereof "shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more such purposes: . . ."[7]

Real property . . . from which no rents, profits, or incomes are derived, shall be so exempt though not in actual use therefor by reason of the absence of suitable buildings or improvements thereon, if the construction . . . is in progress, or is in good faith contemplated . . . the real property . . . leased or otherwise used for other purposes, shall not be exempt, but if a portion only . . . is used exclusively for carrying out thereupon one or more such purposes . . . then such lot or building shall be so exempt only to the extent of the value of the portion so used, and the remaining, shall be subject to taxation; provided, that a lot or building . . . actually used for hospital purposes, by a free public hospital, depending for maintenance and support upon voluntary charity, shall not be taxed as to a portion thereof leased or otherwise used for purposes of income, when such income is necessary for, and is actually applied to the maintenance and support of such hospital . . .; property held by trustees named in a will or deed of trust or appointed by the Supreme Court of the State of New York for hospital . . . purposes . . . shall be exempt to the same extent and subject to the same conditions and exceptions as if held by a corporation.[8]

Any property devised or bequeathed . . . to any . . . charitable . . . benevolent, hospital, or infirmary corpora-

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exempted by law from taxation. 1891, **In re** Vassar, 127 N. Y. 1, 21 N. E. 394; affg. (1890) 58 Hun. 378, 12 N. Y. S. 203.

This exemption is, however, applicable only to domestic corporations. 1893, **In re** Prime, 136 N. Y. 347, 32 N. E. 1091.

[7] Laws 1918, C. 288, p. 957, amending L. 1909, Sec. 6204, Subs. 7, amended L. 1916, C. 411.

[8] N. Y. Laws 1918, C. 288, p. 957, amending Sec. 6204, Subd. 7, amended L. 1916, C. 411, Subs. 7.

tion, wherever incorporated . . . shall be exempted from and not subject to provisions. . . . No exemption is permitted if any officers, member, or employee receive or are entitled to pecuniary profit. . . .[9]

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9 N. Y. Laws 1917, C. 53, p. 104, amending L. 1909, C. 620221.

When an incorporated academy, or seminary of learning, leases its building and premises to be used as a boarding house through the summer, the Court has held that its statutory exemption is not forfeited. 1885, Temple Grove Seminary vs. Cramer, 98 N. Y. 121.

A hospital for the care and treatment of sick and disabled indigent patients has been held to be an almshouse within the meaning of the statutory exemptions covering legacy taxes, 7 N. Y. S. 207, 1889.

The provisions of the tax law (L. 1896, Ch. 908, Art. 1, Sec. 4, Subd. Md. 7) exempts the property of charitable corporations and associations from taxation. These provisions supersede and by implication repeal the provisions of all special acts exempting the property of such corporations and associations, and legacies to them. It applies also to all such corporations and associations claiming exemptions under Subd. 7, vesting after Ch. 382 of the Laws of 1900 (amending Article 10 of the Tax Law and which relates to the tax upon transfers of property) took effect. All these are subject to the transfer tax, since such statute provides that the exemptions enumerated in Section 4 of the Tax Law shall not be construed as applicable in any manner to the provision of Article 10 imposing such transfer tax. 1901, **In re** Huntington, 168 N. Y. 399, 61 N. E. 643.

The Appellate Division of the Supreme Court, 1908, in the case of People ex rel. Roosevelt Hospital vs. Raymond, 111 N. Y. S. 177, 125 App. Div. 720, held that "the General Tax Law, Chapter 908, of the Laws of 1896, governs the whole subject of taxation and exemption therefrom, and repeals all prior acts, general or special, providing for exemptions . . ." The Roosevelt Hospital, "which was incorporated prior to the enactment of the tax law by a special act exempting its property from taxation, and which received property given in reliance on such exemption, is only exempt under the tax law as to lands used exclusively for hospital purposes. Lands owned by the hospital and leased to tenants were held not to be exempt, although the rents were devoted exclusively to hospital purposes." This was reversed the following year, in People ex rel. Roosevelt Hospital vs. Raymond, which held that the charter provision in this case was not by the general tax law. Here a testator gave his estate to trustees in trust to establish a hospital, directing them to apply to the Legislature for acts to incorporate the hospital. The Legislature passed an act creating a hospital corporation providing that its property should be exempt from taxation. The Court held that all of the corporation property, whether used for the hospital or otherwise, was exempt from taxation, notwithstanding the subsequent tax law of 1896 (Laws 1895, p. 797, C. 908) which provides that a corporation organized for hospital purposes shall be exempt from taxation, but that property used for other purposes shall not be exempt. 1909, 194 N. Y. 189, 87 N. E. 90.

A statutory exemption from taxation does not extend to an assessment for the benefit resulting from the opening of a street: such assessments are not taxes, within the meaning of the act. 1875, People vs. Syracuse, 63 N. Y. 291. A similar holding is given in the case of Harlem Presbyterian Church vs. New York, where the property of a religious corporation, although not assessed for taxes, is not exempt

§ 191. **NORTH CAROLINA: Constitution.** Property belonging to the State or to municipal corporations shall be exempt from taxation. The General Assembly may exempt . . . property held for . . . charitable or religious purposes.[10]

Statutes. The General Assembly has provided by General Act for the exemption of real estate occupied and used by hospitals not conducted for profit and the personal prop-

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from an assessment for a local improvement, by which it is benefited. 1881, Roosevelt Hospital vs. New York, 84 N. Y. 108.

Vacant lots, held as a site for a church to be erected in the future, have been held not to be exempt from taxation. 1854, Trinity Church vs. New York, 10 How. Pr. (N. Y.) 138. Though two buildings belonging to a religious corporation stand upon the same parcel of land, one being used for a church and the other for a parsonage, the parsonage is not exempt from taxation. 1888, People vs. Collison, 22 Abb. N. C. (N. Y.) 52, 18 St. Rep. 125.

A building used as a hospital for indigent sick, and as a dispensary for the relief of the poor, is exempt as an almshouse. 1889, Western Dispensary of N. Y. vs. N. Y., 4 N. Y. S. 547, 25 State Rep. 178.

The New York hospital is not deprived of its exemption from taxation because occasionally certain insignificant articles of produce have been sold, and the proceeds applied to the support of its inmates, nor because it charges some patients who are able to pay and uses the money for the support of those who are not. 1890, People vs. Purdy, 58 Hun. 386, 12 N. L. S. 307, affd. 1891, 126 N. Y. 679, 28 N. E. 249.

Where the premises belonging to a plaintiff were used exclusively for religious purposes, it has been held that the plaintiff's right to exemption from taxation, was not affected by the fact that the sexton or janitor resided with his family, on the upper floor, for which, however, he paid no rent. 1892, Shaarai Berocho vs. New York, 28 J. & S. (N. Y.) 479.

The Act of 1890, Ch. 553, amending the Act of 1889, C. 101, and which exempts the religious, charitable, and other corporations named therein, from general taxation on personal property and from the collateral inheritance tax, applies only to domestic corporations; foreign religious and charitable corporations are not exempted from the payment of a legacy tax. 1893, **In re** Prime, 136 N. Y. 347.

A corporation which is organized exclusively for the purpose of promoting benevolent and charitable purposes, specified in the act of 1897, Ch. 371, has been held to be taxable on that part of a library building, consisting of a theater or hall, leased at fixed rates of rental, and used for such purposes only. 1898, People vs. Sayles, 32 App. Div. 197, affd. 1898, 157 N. Y. 677.

A schoolhouse belonging to an unincorporated religious society in the city of New York, is not exempt from taxation. Under Ch. 282 of the laws of 1852 or Sec. 827, Ch. 410 of the laws of 1882; the words "exclusively the property of a religious society" refer to a society that has been incorporated. 1890, Church of St. Monica vs. New York, 119 N. Y. 91, reversing the same case, 23 J. & S. (N. Y.) 160.

Under the act of 1852, Ch. 282, premises in the City of New York used by a religious society for a school, under a lease, and of which it is not the owner, are not exempt. 1885, Hebrew Free Association vs. New York, 99 N. Y. 488.

10 Statutes 1905, p. 614, Constitution Art. V, Sec. 5.

erty and endowment funds of such hospitals conducted purely and completely as charities. Property which is held or used for investment, speculation, or rent by such organizations is not to be exempt "unless said rent or the interest or the income from such investments shall be used exclusively for . . . charitable or benevolent purposes, or the interest upon bonded indebtedness.[11]

§ 192. **NORTH DAKOTA: Constitution.** Laws shall be passed taxing by uniform rule all property according to its true value in money, but the property of the United States and the state, county, and municipal corporations, both real and personal, shall be exempt from taxation; and the Legislative Assembly shall by a general law exempt from taxation property used exclusively for . . . charitable purposes.[12]

Statutes. The Legislature has by general law permitted the exemption "of all institutions of public charity, including public hospitals under the control of religious or charitable societies, used wholly or in part for public charity, together with the land actually occupied by such institution, not leased or otherwise used with a view to profit; and all money and credit appropriated solely to sustaining, and belonging exclusively to such institutions. . . .[13] Exemption from the income tax is allowed also.

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11 Statutes 1919, Sec. 7768.

There has been no legal decision concerning the last provision Sec. 7768, nor concerning Sec. 5523. It has been held that the constitutional provision is sufficiently broad and comprehensive enough to uphold the legislative exemption as to all property used exclusively for educational purposes. It is the use to which the property is devoted and to the extent of the interest so dedicated which should control, rather than the title or other tenure by which it is held. 1912, Corporation Commission vs. Construction Company. 160 N. C. 582, 76 S. E. 640. But the exemption does not apply to property held by trustees charged with paying over to institutions of that character the rents and profits of real estate held by them for that purpose, though the "entire rents are faithfully used and applied exclusively thereto." 161 N. C. 56, 76 S. E. 687.

"The state creating a corporation has the power to impose an inheritance tax upon the transfer by will or devolution of the stock of such corporation, held by a non-resident at the time of his death, and this by virtue of the authority of the chartering state to determine the basis of organization and the liability of all its shareholders." 1924, Rhode Island Hospital Trust Company vs. Doughton, 187 N. C. 263, 121 S. E. 741.

12 Constitution Art. 11, Sec. 176; Comp. Laws 191, p. C1.

13 Laws 1919, C. 223, p. 427, Sec. 2078, Subd. 6.

The Supreme Court has held that property which belongs to an

§ 193. **OHIO: Constitution.** Institutions used exclusively for charitable purposes and public property used exclusively for public purposes may, by general laws, be exempted from taxation.[14]

Statutes. Lands, houses, and other buildings belonging to a county, township, city, or village, used exclusively for the accommodation or support of the poor, and property belonging to institutions of public charity only shall be exempt from taxation.[15] Taxation is to be by uniform rule, and also all real and personal property according to its true value in money excepting . . . institutions used exclusively for charitable purposes . . . may, by general laws, be exempted from taxation.[16]

§ 194. **OKLAHOMA: Constitution.** All property used exclusively for religious and charitable purposes, and all

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individual and which is used exclusively for charitable purposes but which is not owned by an "institution" is not exempted from taxation, an individual not being an institution. 1900, Engstadt vs. Grand Forks County, 10 N. D. 54, 84 N. W. 577.

[14] Ohio Constitution, Art. XII, Sec. 2.

[15] Page & Adams, Anno. Gen. Code 1910, Constitution Title I, Ch. 2, p. 22, Sec. 5353.

[16] Same Const., Art. XII, Sec. 2.

Schools which are established by private donations, and conducted for the benefit of the public, and not with a view to profit, are "institutions of purely public charity," and such school property may be exempted from taxation without reference to the manner in which the title thereto is held, or the form or character of the organization conducting the school. 1874, Gerke vs. Purcell, 25 O. S. 229. Parish houses or residences of the priests and bishops of the Roman Catholic Church are not exempt from taxation and legal assessments. 1907, Watterson vs. Halliday, 77 O. S. 150. A parsonage is not an institution of charity. 1880, Library Assn. vs. Pelton, 36 O. S. 253.

A provision of the General Code, Sec. 3963, states that no charge shall be made by a municipal corporation for water, which is supplied to hospital, asylum, or other charitable institutions, is a valid and constitutional provision, and authorizes the trustees of the waterworks to furnish water free to an Ohio hospital for epileptics, a part of which is within and a part of which is without the municipal corporation in question. 1895, Gallipolis vs. Waterworks, 2 O. N. P. 161.

An association which extends relief only to its own sick and needy is not a public charity and is not exempt from taxation. 1872, Morning Star Lodge, etc., vs. Hayslip, 23 O. S. 144.

If property is used for charity and is subsequently sold, and such charitable use continues until the property is paid for, such sale does not terminate exemption until the purchase price is paid and the charitable use ceases. 1894, Meyers vs. Akins, 80 C.c. 228; 4 O. C. D. 425.

A foreign charitable corporation is not exempt as is a domestic organization from the collateral inheritance act. 1904, Humphreys vs. State, 70 Ohio 67, 70 N. E. 957. See also 1922, Harvard College vs. State, 106 Ohio St. 303, 140 N. E. 189.

property of the United States, and of this State, and of counties and of municipalities of this State, . . . shall be exempt from taxation. . . .[17]

Statutes. The Legislature has made virtually the same provision by statute in the general revenue act. All property, both real and personal, of scientific, educational, and benevolent institutions, devoted solely to the appropriate objects of the institutions, is exempt from taxation.[18]

In computing the net income taxable under the provisions of the act, the following deductions from the net income of any person are allowed: All charitable donations not to exceed fifteen per cent of the taxpayer's net income.[19]

§ 195. **OREGON: Constitution.** The Legislative Assembly shall, and the people through initiative may, provide by law uniform rules of assessment and taxation. All taxes shall be levied and collected under general laws operating uniformly throughout the State.[20] (Initiative Amendment adopted by people at election June 4, 1917.)

Statutes. By statute it is provided that the personal property of benevolent or charitable institutions incorporated within the State, and such real estate as is actually occupied for the purposes of incorporation, shall be exempt from taxation.[1]

§ 196. **PENNSYLVANIA: Constitution.** All taxes shall be uniform upon the same class of subjects, . . . but the General Assembly may by general laws exempt from taxation public property used for public purposes, . . . and institutions of purely public charity.[2]

Statutes. The General Assembly has by statute provided for the exemption of all hospitals "with the grounds thereto annexed and necessary for occupancy and enjoyment of the same, founded, endowed, and maintained by the public or private charity," from all and every county, city, borough, road, school, and poor tax. Provided, that all property, real or personal, other than that which is in actual use and occu-

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17 Rev. Laws Anno. 1910, p. CLV Constitution, Art. X, Sec. 6.
18 Rev. Stats. 1910, C. 72, Art. 1, p. 1794, Sec. 7303.
19 Income Tax S. L. 1921, C. 44, p. 62, Subsec. 7.
20 Stats. 1920 (Olson), Constitution, Art. IX, Sec. 1.
1 Stats. 1920 (Olson), Title XXIX, C. III, p. 4234, Sec. 4235.
2 Stats. 1920 (West), p. XXIV, Art. IX, Sec. 1, p. XXIV.

pation for purposes aforesaid, and from which any income or revenue is derived, shall be subject to taxation, except when exempted by law for state purposes. All hospitals "with ground thereto annexed and necessary for occupancy and enjoyment of the same, founded, endowed, and maintained by public or private charity, are exempt from taxation."[3]

All real property owned by one or more institutions of purely public charity, used and occupied partly by such owner or owners and partly by other institutions of purely public charity and necessary for the occupancy and enjoyment of such institutions, . . . are exempt from all and every county, city, borough, township, road, school, and poor tax.[4]

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[3] Pennsylvania Constitution, Art. IX, Par. 153.

[4] Laws 1923, No. 360, p. 928.

An act of April 6, 1833, declared that the real property, including grounds rents, belonging to the Christ Church Hospital, "shall be and remain free from taxes." Taxes were levied in this case and paid under protest. The Court held that there was nothing in the statute above quoted savoring of contract and that it was subject to repeal. The remedy in this case was held to be by appeal, it not being a case of mere overrating. 1855, Christ Church Hospital vs. Philadelphia, 29 Pa. 229. This holding was sustained by the United States Supreme Court in 1860. Christ Church Hospital vs. Philadelphia, 24 How. (U. S.) 300.

The constitutional and statutory requirements do not require that the grant of property to a purely public charity shall be stamped by perpetuity. The only requirement is that where the institution seeks exemption, its character, whether created by charter, conveyance, articles of association, or voluntary rules and regulations, shall be that of a purely public charity. 1899, White vs. Smith, 189 Pa. 222.

The same question of use came up later and it was held that a charity is not a "purely public charity" which excludes from its benefits any person because he has not a particular relation to some society, church, or other organization. So long as the classification is determined by some distinction which involuntarily affects or may affect any of the whole people, although only a small number may be benefited, it is public. In this case, a home limited to indigent, afflicted, and aged Freemasons, although supported by voluntary contributions, without charge to the beneficiaries, and with no profit either to the corporations or its officers, is not a "purely public charity," exempt from taxation. 1894, Philadelphia vs. Masonic Home, 160 Pa. St. 572; 40 Am. St. Rep. 736.

A purely public charity within the meaning of Article IX, Section 1, of the Constitution, is not necessarily one solely controlled by the State, but extends to private charitable institutions which are not administered for any individual gain. The mere fact that a public charity is under the control of those belonging to a particular religious denomination, does not prevent it from being a purely public charity, so long as its ultimate object is to help an indefinite number of persons without regard to their religious beliefs. In this case the action of the Court below in dividing a building according to the relative rented values of the floor spaces rented and allotted to others and

that occupied by the charity for its purposes, was sustained when it was shown that the division was equitable and that no injustice was done to the city. 1920, Methodist Episcopal Church vs. Philadelphia, 266 Pa. 405, 112 Atl. 17.

A purely public charity is not necessarily or solely controlled and administered by the State, but extends to private institutions of purely public charity and not administered for private gain. 1878, Donohugh's Appeal, 8 Pa. St. 309.

A hospital to the benefits of which the general public had no legal right, and from which they might be excluded, has been held not to be a public charity and as such exempt from taxation. 1878, Delaware County vs. Sisters of St. Francis, 2 Del. Co. 149.

An institute of science whose benefits are restricted to members and upon conditions prescribed by a board of managers is not exempt as a purely public charity within the Constitution. 1880, Delaware County Institute of Science vs. Delaware Co., 94 Pa. 163.

The Pennsylvania hospital has been involved in a series of cases, among others the following:

The charter of the hospital prohibited the use of its property or income otherwise than for the care of the "sick and distempered poor," without partiality or preference. "There was a hospital for physical diseases and a separate hospital for the insane." The hospital was maintained by voluntary contributions and by income from accumulated gifts and bequests, and its property and income were applied exclusively to said purposes. The expenses exceeded the income. The president and directors received no salary or emolument. All who applied were received equally, without discrimination as to race, sex, or religion. In each hospital were a number of pay patients. The city filed a tax claim against a portion of the property devoted to the insane hospital, claiming that said portion was not exempt because a number of patients treated there paid, some below and others above cost of maintenance, and for the latter class a separate building had been erected within the general enclosure. 1890, Philadelphia vs. Pennsylvania Hospital, 8 Pa. C. C. 72, 47 L. 170, 9 Lane L. R. 107. The tax claim for a water pipe filed against the insane hospital was disallowed. The apparent profit was applied to the general objects of charity and no portion of it inured to the benefit of anyone concerned with administering the charity. 1893, Philadelphia vs. Penna. Hospital for the Insane, 154 Pa. 9, 25 Atl. 1076.

Land leased by the county commissioners from a private citizen and on which is maintained an industrial home for poor children, does not cease to be private property, and is not exempt from taxation. 1895, Blair County Com'r, 8 D. R. 41.

Buildings which were owned by an incorporated college and located on the college ground which were occupied as residences for persons employed in carrying on the work of the institution have been included in the tax exemption of colleges under the act of 1874. Vacant lots adjoining, occupied and used by the colleges and deemed necessary for the use of the college by the trustees, were in the same case included in the exemption. 1889, Northampton County vs. Lafayette College, 128 Pa. 132.

Farming property, although separated from the main building of the hospital, has been exempted. 1895, Pennsylvania vs. Delaware County, 169 Pa. 305.

The following cases govern property not annexed to and not necessary for the occupancy and enjoyment:

In Pittsburgh vs. Home of the Friendless, "the land taxed was an

unimproved tract separate from the ground on which the buildings of the home were erected, and in no way connected therewith, and barren and unproductive of revenue." The land was not exempt, although the home was a purely public charity. 1877, 3 Pa. C. C. 390. Where the lot was separated by a street from the land on which the institution was built, and it was not shown to be necessary to the use of the charity, the land has not been exempted. 1895, Phila. vs. Ladies' United Aid Soc., 154 Pa. 12. And also a church is not entitled to hold a large vacant lot exempt from taxation when it was not at the time used as an actual place of religious worship and not at all necessary for the occupancy and enjoyment of a chapel erected but being held for the erection of a new church not yet in the course of erection. 1902, Pittsburgh vs. Third Presbysterian Church of Pittsburgh, 20 Super. Ct. 362.

Property which is not in actual use and from which income or revenue is derived has in a number of cases been held not exempt from taxation:

The Y. M. C. A. rented a portion of its building and a large annual income was derived from this rent. This income was applied to carrying on the work of the association. The Court held that the association was entitled to freedom from taxation for as much of the premises as is in actual use for the purposes of charity, while portions rented to and occupied for business, and for the use of which income was received, were subject to taxation. 1879, Y. M. C. A. vs. Donohugh, 13 Phila. 12.

Where a church congregation used a portion of its building exclusively for religious purposes and rented a portion to the city for school purposes, the Court held that "if the property is rented out, and thus produces income or revenue, it is subject to taxation, and the fact that for a part of the time, certain days or hours in the week, the church also uses the rented portion for its own purposes, does not relieve it or take the case out of the express language of the act." An actual use means an exclusive use, and a mere convenient or alternate occupation by the church does not come within the requirements for exemptions. 1894, Philadelphia vs. Barber, 160 Pa. 123.

Property which has ceased to be used for the purpose rendering it exempt forthwith becomes subject to taxation as fully as though it had never been exempted. For example, a building originally erected and used as a hospital, but not used for nearly twenty years, has been held not exempt. 1892, Phila. vs. Jewish Hospital Assn., 148 Pa. 454. A school founded and endowed as a public charity is not exempt from taxation after it has ceased to be maintained as such. 1897, Grubb vs. Weaver, 19 Pa. C. C. 609.

It would seem that the intent of the act of 1874 was to exempt personal as well as real property in use by "institutions of learning, benevolence, and charity," 1891, Church vs. Gratz, 139 Pa. 497, and under the act of April 11, 1848 (P. L. 504), bonds which are held by the city of Philadelphia in trust for the Wills Eye Hospital have been held exempt from taxation. 1884, Pennsylvania vs. Southworth, 18 Phila. 593.

Following an earlier decision that charter exemptions from taxation are not contractual in character, it has been held that lots against which city claims for water pipes were filed, were liable for assessment. 1890, City of Philadelphia vs. Pennsylvania Hospital, 134 Pa. St. 171, 19 Atl. 490. In a similar case the hospital was held liable for assessments for street improvements, which assessments are imposed not by virtue of the taxing power but are in the nature of

§ 197. **RHODE ISLAND: Constitution.** The General Assembly shall, from time to time, provide for making new valuations on property, for the assessment of taxes, in such a manner as they may deem best.[5]

Statutes. A general statutory provision exempts the property, real and personal, held for a hospital for the sick or disabled.[6]

§ 198. **SOUTH CAROLINA: Constitution.** It shall be the duty of the General Assembly to enact laws for the exemption from taxation of all . . . charitable institutions in the nature of asylums for the insane . . . and indigent persons . . .; but property of associations and societies, although connected with charitable objects, shall not be exempt from state, county, or municipal taxation; provided, that this exemption shall not extend beyond the buildings and premises actually occupied by such . . . although connected with charitable objects.[7]

Statutes. By statute the General Assembly has exempted all property belonging to institutions of purely public charity and used exclusively for the maintenance and support of such institutions.[8]

§ 199. **SOUTH DAKOTA: Constitution.** It is provided that the Legislature shall by general law exempt from taxation property used exclusively for charitable purposes.[9]

Statutes. All property belonging to a charitable, benevolent or religious society or property used exclusively for benevolent or religious purposes is exempt from taxation.[10] Property to the clear value of $2,500.00 transferred to a public hospital or purely charitable institution within the State, is by statute exempted from the inheritance tax.[11]

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police regulations. 1891, City of Philadelphia vs. Contributors to the Pennsylvania Hospital, 143 Pa. St. 367, 22 Atl. 744.

5 Gen. Laws 1909, p. 49. Const. Art. IV, Sec. 15.

6 Laws 1912, C. 769, Sec. 38, p. 26, Sec. 2.

7 Code 1912, Vol. II, p. 701, Const. 1868, Art. IX, Sec. 5.

8 Stats. 1919, Sec. 294, Subd. 9.

9 Constitution, Art. XI, Sec. 6.

10 Rev. Code 1919, p. 1620, Sec. 6670.

11 Code 1919, Sec. 6832.

A parsonage is exempt under the constitution. The rule that laws

§ 200. **TENNESSEE: Constitution.** All property, real, personal, or mixed, shall be taxed, but the Legislature may exempt such as may be held by the State, by counties, cities, or towns, and used exclusively for public purposes, and such as may be held and used for purely religious or charitable purposes. . . .[12]

Statutes. Statutory provisions exempt from the general revenue acts the collateral inheritance and succession, and the inheritance tax acts, property used for purely charitable purposes but all "property belonging to such institution used in secular business and competing with a like business that pays taxes to the State shall be taxed on its whole or partial

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should be strictly construed does not mean unreasonable construction and the word purpose above quoted means that which is first in intention, which is fundamental. "It follows that, in determining the 'use' to which certain property is put for a religious 'purpose' we must, in each case, determine what first, or fundamentally, is the intention of the owners of such property when putting same to use." The "purpose" means the object to be attained, the end or aim to be kept in view, and the determination of the right of exemption is to be based on a consideration of the primary purpose of the property, "primary" meaning first in order of time, or development, or in intention, and not by the secondary use of the property. 1921, State vs. Erickson, 40 N. D. 586, 182 N. W. 315.

The Supreme Court has held that where a charitable institution rented part of its building as a store, it is not exempt from taxation as property "used exclusively" for charitable purposes. "The property itself, not its rents and profits, must be used for charitable purposes." 1902, State vs. Board of Equalization, 16 S. D. 219, 92 N. W. 16.

In the case of Lutheran Hospital Association of South Dakota vs. Baker, the hospital was incorporated as a benevolent corporation with a membership composed of some members of a Lutheran congregation for the purpose of providing for, nursing, and giving medical attention to sick persons. The details of finance and organization will not be given here; the Court says that "the criterion in this class of cases seems to be that whatever is done or given gratuitously in the relief of public burdens or for the advancement of the public good is a public charity, and an institution founded as a public charity does not lose its character as such under the tax laws if it receives a revenue from the recipients of its bounty sufficient to keep it in operation, or, applying, another test, if the object for which an institution is founded is the general public good, and not private, and it is so conducted that the public receives all the benfits of it, it is purely a public charity." The fact that the hospital association had a department for training nurses, was held not to conflict with its charitable purposes. 1918, 40 S. D. 226, 167 N. W. 148.

A hospital organized for the purpose of making profit is not exempt from taxation although a large percentage of its work is charitable in character. 1924, City of Knoxville vs. Ft. Sanders Hospital (Tenn.), 257 S. W. 408.

12 Constitution, Art. II, Sec. 20.

value in proportion as the same may be used in competition with secular business."[13]

§ 201. **TEXAS: Constitution.** The Legislature may, by general laws, exempt from taxation public property used for public purposes and institutions of purely public charity.[14]

The property of counties, cities, and towns, owned and held only for public purposes . . . and all other property devoted exclusively to the use and benefit of the public, shall be exempt from forced sale and from taxation.[15]

Statutes. The Legislature has by general law provided for the exemption of all buildings belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profits "unless these rents and profits and all moneys and credits are appropriated by such institutions solely to sustain such institutions and for the benefit of the sick and disabled members."[16]

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13 Supp. 1903, p. 71, Sec. 2.

The Tennessee Court has declared that statutes which exempt property from taxation when "held and used for purposes purely religious, charitable, scientific, literary, or educational," are less strictly construed than like statutes exempting property held and used for private gain or individual profit. 1889, State vs. Fisk University, 87 Tenn. 233.

14 McEachen's Civil Statutes Anno., p. 38, Constitution, Art. VIII, Sec. 2.

15 Same, Art. XI, Sec. 9.

16 Civil Stats., Art. 7507, Subd. 6.

A hospital organized by some members of a church parish, having the general purpose to provide for and nurse sick and destitute persons to which all persons in need of treatment were freely admitted whether they could pay or not, though such as were able to pay were expected to do so, as the hospital has no source of revenue other than such fees and donations to it, was a "purely public charity" whose land and buildings were exempt from taxation. 1918, Scott vs. All Saints Hospital (Tex.), 203 S. W. 146. See also, 1924, Santa Rosa Infirmary vs. City of San Antonio (Tex.), 259 S. W. 926.

Property used for revenue purposes is not exempt. 1923, State vs. Settegast (Tex.), 254 S. W. 925.

A parsonage or rectory, used as a residence for the minister, is not exempt from taxation as an actual place of religious worship or an institution of purely public charity. 1918, Trinity Methodist Episcopal Church vs. City of San Antonia (Tex.), 201 S. W. 669.

The Legislature may exempt from taxation institutions of purely public charity, and not merely the buildings used and owned by such institutions. 1920, State vs. Settegast (Tex.), 227 S. W. 253.

Trustees to whom property was bequeathed for the purpose of maintaining a public charity hospital for the gratuitous relief of those in sickness and distress, who were residents of a specified

§ 202. **UTAH: Constitution.** The Legislature shall provide by law a uniform tax, . . . provided that the property of the United States . . . lots with buildings thereon used exclusively for . . . charitable purposes . . . shall be exempt from taxation.[17]

Statutes. The Legislature has exempted from taxation property and lots with the buildings thereon which are used exclusively for charitable purposes.[18]

§ 203. **VERMONT: Statutes.** The Legislature has exempted by statute the real and personal estate granted, sequestered, or used for public or charitable uses. This exemption is not to be construed as exempting "lands or buildings owned or kept other than a building used as a hospital, lands adjacent to such edifice, . . . home, and hospital kept and used as a lawn, playground, or garden, and the so-called glebe lands. . . ." But the lands and buildings used exclusively for the support of hospitals which,

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county, constituted and "institution of purely public charity" as respected exemption from taxation where no private or pecuniary return was reserved to the giver or any other particular person, and the entire benefits were to go to the public generally. 1920, Same (Tex.), 227 S. W. 253.

Trustees under a will who had organized themselves into a board and held property bequeathed to them for the establishment and maintenance of a hospital constituted an "institution of purely public charity" exempt from taxation, though the board had no members in the sense that lodges, mutual aid societies, and other organizations have, as Rev. St. 1911, Art. 7507, Sec. 6, does not exclude other institutions than those particularly defined therein. 1920, Same (Tex.), 227 S. W. 253.

Trustees to whom property was bequeathed for the purpose of maintaining a public charity hospital were exempt from taxation on such property as an institution of purely public charity, though they were accumulating a fund with which to build and operate a hospital and converting non-revenue producing property into income bearing assets, and did not yet have a hospital in operation: the property being permanently and legally dedicated to the specific charity by the irrevocable terms of the will. Rev. Sts. 1911, Art. 7507, exempting institutions of purely public charity from taxation is not unconstitutional. 1920, Same (Tex.), 227 S. W. 253.

17 Comp. Laws 1917, Vol. I, Constitution, Art. XIII, Sec. 3, p. 77.

18 Comp. Laws 1917, Sec. 5863.

Under the provision of section 3, Art. 13 of the Constitution, and Sec. 2503, R. S. 1898, only that portion of the property of a benevolent society which is occupied and used exclusively for charitable purposes, is exempt from taxation, and the remaining portion thereof devoted to purposes of revenue is not exempt. 1901, Parker vs. Quinn, 23 Utah 332, 1897, Judge vs. Spencer, 15 Utah 242. 1898, Kaysville vs. Ellison, 18 Utah 163.

"without pay, receive and care for indigent, old, or infirm patients or inmates, shall be exempt from taxation, when such lands or buildings are located in the town in which such institutions are situated."[19]

Provision is also made for exemption from the tax on collateral inheritances.[20]

§ 204. **VIRGINIA: Constitution.** Except as otherwise provided in this Constitution, the following property and no other, shall be exempt from taxation, state and local; but the General Assembly may hereafter tax any of the property hereby exempted except real estate belonging to, actually and exclusively occupied, and used by, personal property, including endowment funds belonging to . . . hospitals . . . which are not conducted for profit, but purely and completely as charities.[1]

No inheritance tax shall be charged directly or indirectly against any legacy or devise made according to law for the benefit of any institution or other body of any natural or corporate person whose property is exempt from taxation . . . [1]

Nothing contained in this section shall be construed to exempt from taxation the property of any person, firm, association, or corporation who shall, expressly or impliedly, directly or indirectly, contract a promise to pay any sum of money or other benefit on account of death, sickness . . .; and whenever any building or land, or part thereof . . . shall be leased or shall be a source of revenue or profit, all such buildings and lands shall be liable to taxation.[1]

Buildings with the land they actually occupy, and the furniture and furnishing therein, belonging to any benevolent or charitable association.[2]

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19 Gen. Laws 1917, Sec. 687. Also 1923, St. Alban's Hospital vs. Enosburg, 96 Ver. 389, 120 Atl. 97.

20 P. A. 1919, No. 48, p. 52, Sec. 1090.

Foreign charitable corporations have been held to be not exempt from the collateral inheritance tax act. By statute a tax of five per cent of the value in money of such legacy or distributive share is imposed. (P. A. 1919, No. 48, p. 52, Sec. 1090.) 1906, **In re** Hickock, 78 Vt. 259, 62 Atl. 724.

1 Virginia Code 1904, p. CCLXVII, Constitution 1902, Art. 13, Sec. 183.

2 Same, Constitution, Art. 13, Sec. 183.

Statutes. A similar exemption is made by statutory enactment.[3]

§ 205. **WASHINGTON: Constitution.** The Legislature is to provide by law a uniform and equal rate of assessment and taxation on all property in the State; provided, that the property of the United States, and of the State, counties, . . . and such other property as the Legislature may by general laws provide, shall be exempt from taxation.[4]

Statutes. The Legislature has by general law exempted from taxation "hospitals for the care of the sick, when such institutions are supported in whole or in part by public donations or private charity." An institution claiming exemption is to provide by its articles of incorporation that the mayor of the city and the chairman of the board of county com-

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[3] Code 1904, Sec. 457, Subd. e, Sec. 488, Subd. d.

In Virginia, the Hampton Normal and Agricultural Institute was incorporated by an act of the General Assembly June 4, 1870, "for the instruction of youth on the various common school, academic, and collegiate studies, etc." and under this charter conducted a "model farm." The Court held that, although the institutions derived a profit from the sale of the surplus products of this farm, the farm so conducted was not liable to taxation under section 183 of the Constitution providing that the lands of such institutions shall be liable to taxation, if they are a "source of income or profit," where it would be difficult, if not impossible, to determine with exactness the ratio between that which would be taxable as constituting a source of revenue, and that which would be exempt as being wholly devoted to education purposes. The "taxing power must clearly ascertain and fix the subject of taxation and the amount of the burden imposed and that all doubts in respect thereto are solved in favor of the citizen . . . " The farm was exempt and in its opinion the Court says, "it is the use to which the property is put, and not the use to which profits which are realized from such property are put, which determines whether it shall be exempt or not. It is the buildings, together with such additional land as may be reasonably necessary for the convenient use of such buildings, the rents or profits of which are applied to educational purposes, that are exempt." 1907, Commonwealth vs. Hampton Institute, 106 Va. 614, 56 S. E. 594.

An early case held that although by statute orphan asylums and other charitable institutions are exempt from taxation, however, this does not include a tax on a devise or bequest of property to such institutions. 1876, Miller's ex'or vs. Com., 27 Grat. (Va.) 110.

[4] Anno. Code & Stats., Ballinger, p. 85, Constitution, Art. VII, Sec. 2.

The case of City of Petersburgh vs. Petersburgh Benevolent Mechenves Association holds that it is intended to include property of such associations used for "any private purpose or for profits," and not to exempt such property to the extent its proceeds are used for such purposes. 1884, 78 Va. 431.

missioners wherein such institution is located are ex-officio trustees thereof with the power of trustees.[5]

§ 206. **WEST VIRGINIA: Constitution.** Taxation shall be equal and uniform throughout the State . . . property used for . . . charitable purposes . . . and public property may, by law, be exempted from taxation.[6]

Statutes. The Legislature has enacted that all property belonging to any public institution or to any hospital or lunatic asylum not conducted for profit is to be entered on the assessor's books but is not to be taxed.[7]

§ 207. **WISCONSIN: Constitution.** The rule of taxation shall be uniform, and taxes shall be levied upon such property as the Legislature shall prescribe. Taxes may be imposed on incomes, privileges, and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided.[8]

Statutes. The Legislature has exempted by statute the personal property owned by any benevolent association and

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5 Laws 1915, C. 131, p. 358, Sec. 9098.

The words "hospitals" in the statute exempting hospitals from taxation means only the buildings used and occupied, and not the grounds attached thereto. 1896, Thurston vs. Sisters of Charity, 14 W. 264, 44 Pac. 252.

A parsonage and lot some distance and separated from the church lot has been held not to be exempt from taxation. 1912, Foley vs. Oberlin Congregational Church, 67 W. 283.

6 Code Anno. 1906, Art. 10, Sec. 1.

7 Code 1906, Sec. 741.

The Supreme Court of Appeals of West Virginia, September 26, 1916, in the case of Reynolds Memorial Hospital vs. Marshall County Court, has held that a hospital . . . not leased out for profit, "but which devotes all of the proceeds arising therefrom to its maintenance and support, and deficits caused by expenses in excess of receipts are paid by voluntary contributions, and no profit is sought or received by its owners, is property used for 'charitable purposes,' and may be exempted from taxation notwithstanding that such hospital is not used exclusively for free patients, but its rules and regulations require payment of such of its patients as are able to pay, according to their circumstances and the accommodations they receive, and that no person has individually a right to demand admission, but all are admitted under certain reasonable rules and regulations." 1916 (W. Va.), 90 S. E. 238.

"The purpose for which the property is to be used is not stated in the conveyances. The applicants do not seek exemption on account of the title by which they hold the property, nor the character of the authority to control it, but the uses to which it is put." 1916, Same (W. Va.), 90 S. E. 238.

8 Statutes 1919, Constitution, Art. VIII, Sec. 1.

used exclusively for the purposes of such association, the real property "necessary for the location and convenience of the buildings of such association, and embracing the same, not exceeding ten acres; provided such real or personal property is not leased or otherwise used for pecuniary profit.[9]

All property transferred to municipal corporations within the State for strictly county, town, or municipal purposes, or to the corporations of this State organized under its laws solely for religious, charitable, or educational purposes, which shall use the property so transferred, exclusively for the purposes of their organization, within the State, shall be exempt from the inheritance tax.[10]

§ 208. **WYOMING: Constitution.** The property of the United States, . . . shall be exempt from taxation, and such other property as the Legislature may by general law provide.[11]

Statutes. The Legislature has provided that the following property is exempt from taxation: The property of the United States, the State, county, township, incorporated cities, towns and school districts, and "public grounds by whomsoever donated to the public."[12]

All property within the jurisdiction of the State of Wyoming, corporeal or incorporeal, and any interest therein, whether belonging to inhabitants of the State of Wyoming or

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9 Same, p. 885, Sec. 1038.

10 Laws 1923, C. 306, p. 506, amending Sec. 7204 Stats.

An association incorporated by members of a Roman Catholic religious order, without capital stock, for the purpose of conducting a hospital where the sick and maimed of all classes of persons, without distinction on account of race, religion, or position in life, are received and treated, with or without charge, according to the ability of the patient, and which permits no dividends or pecuniary profits to be paid to the members of the order, but loans, without interest, the money received in excess of expenses to other organizations of the same character, is a "benevolent association," within the Rev. Sts. 1038, Subd. 3, exempting from taxation the real property, not exceeding ten acres, of any "religious . . . or benevolent association" necessary for the location and convenience of the buildings of such association. Articles of incorporation in the case made no provision for dividends, stock, etc.; the Sisters received no compensation. And all moneys above actual expenses were loaned to other hospitals of the order without interest. 1899, St. Joseph's Hospital Association vs. Ashland County, 96 Wis. 636, 72 N. W. 43.

11 Comp. Stats. 1910, p. 80. Constitution, Art. XV, Sec. 12.

12 S. L. 1917, C. 87, p. 100, amending Sec. 2321, Comp. Stats. 1910.

not, which shall pass by will, or by laws regulating intestate succession, or by deed, grant, or gift . . . made in contemplation of death . . . except to or for the use of charitable, educational, or religious societies or institutions, the property of which is by the laws of the State of Wyoming, exempt from taxation, or for or upon trust for any charitable purposes to be loaned out within the State of Wyoming or any town therein for public purposes, shall be subject as to the estate passing to each of the following beneficiaries, to a tax at the percentage rates fixed. . . .[13]

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[13] S. L. 1921, C. 126, p. 177.

CHAPTER VII

PUBLIC AID FOR HOSPITALS

§ 215. **Public Contract With Private Hospitals.** The question is raised as to whether the distinction could be made legally and logically between the terms establishment and maintenance. If the State, county, municipality, or district group has the power to establish a hospital by a general act and a hospital is so established, then obviously the hospital is public in character; it may be limited to a particular group of patients as in the case of insane hospitals, but this will not affect its status as a public institution. But suppose that a private hospital is established, shall the community duplicate its work and establish a new institution, or shall it assist and develop that hospital, incidentally relieving its own burdens? It has been shown that an exemption from taxation is in fact a grant of public funds, a relief from expense on the part of one group with its added burden distributed elsewhere. On the other hand, this grant may be considered in the nature of a contract.[1] That is, a community may be given the right to contract for the care of its sick or indigent. Restrictions as to the sectarian or charitable character of the institution may be made but, ordinarily, a private institution may qualify for the care and treatment of such persons. Payment may be on a per capita basis, and such contract may extend over a period of years, or it may be less definite in character.

§ 216. **Public Subsidy or Endowment.** In some states another step has been taken, and in addition to the exemption from taxation or the contract for care, an actual subsidy or endowment is given or permitted by the state, district, or local authorities. It is proposed here to outline briefly the

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[1] No presumption exists in favor of a contract by a state to exempt from taxation. Every reasonable doubt should be resolved against it. Tucker vs. Ferguson, 22 Wall. 527.

legislative and legal or judicial interpretations of these systems, which, of course, differ in each state. What is the difference, then, between a grant of this sort or a contract operating in the future and payable in a lump sum? A contract is an agreement enforceable by law, whereas a grant may be withheld in the discretion of the authorities concerned. But, as in case of a contract, specified standards may be enumerated.

§ 217. **Gifts and Bequests to Community.** There is another type of grants in aid which are not included herein, that is, those in the nature of endowments given to the community or group for the establishment, improvement, or maintenance of the hospital. By statute it is ordinarily provided that these gifts, grants, devises, or bequests may be accepted and administered within the terms of the trust document by the community or group as trustees or executors. This may be conditioned on the maintenance of such institution by the community. Strictly speaking, then, the institution is no longer private, but is public in its operation, management, and maintenance, unless provisions to the contrary are inserted.

§ 218. **Various Methods of Extending Public Aid.** The state subsidies or endowments may be given for the purpose of extending existing facilities or to improve the existing institutions by bringing them under a general system of inspection, making them public institutions which can be checked and governed as carefully as the state institutions. The constitutions of many of the states forbid the giving of public funds to private individuals or institutions, to sectarian organizations, etc. This objection could be met by a contract for care. The State may itself grant aid, as in Rhode Island, to individual hospitals, or as in New York, where cities or municipalities may devote funds to institutions approved by the State Board of Charities and Correction.

In some of the states the legislation may be applied to a group of cities or by special act to particular cities. Arizona, Arkansas, Colorado, Florida, Idaho, Iowa, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wyoming, seem to make no provision for aid. The fol-

lowing summaries arranged by states outline the constitutional, statutory, and legal provisions.

It has been held that in the absence of express legislative authority a municipality has no power to make appropriations by the exercise of the taxing power, to sustain or aid charitable institutions which are not public or municipal agencies, but the Legislature may authorize local authorities to raise money by local taxation and may authorize them to pay the same over to local charitable corporations, for the purpose of carrying out certain designated charities by means of or through the instrumentality or use of private corporations.

§ 219. **Survey of Public Subsidies.** A study of the subsidizing of private charities was made some years ago.[2] The following states were reported as giving no subsidies either state or local: Arizona, Indian Territory, Nevada, Washington, and Wyoming. No report was received for Arkansas, Florida, Idaho, Mississippi, Montana, South Carolina, South Dakota, Texas, or West Virginia. In the census report of 1910 all states are enumerated but two; Oklahoma and West Virginia are listed as having made no public appropriations.[3] The census tables, however, have listed all public aid together, that is, federal, state, county, or municipal aid are not separated. Some of the grants are given under general statute or special provisions and some under special charter or contract provisions or by legal interpretation as in Kentucky.

It is impossible to include herein a complete study of the special charter or contract provisions. Connecticut, Kansas, Maine, Massachusetts, Nevada, and Rhode Island apparently have no constitutional provisions relating to grants or subsidies. Many of the states provide that the credit of the State shall not be loaned as in Alabama, Arizona, Arkansas, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington,

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2 Frank A. Fetter: Subsidizing of private charities. American Journal of Sociology, 1901, pp. 359-385.

3 1910 Census Report on Benevolent Institutions, Table IV, p. 258.

West Virginia, and Wisconsin. Most of these states make a similar provision concerning the loaning of credit by the county, city, town, borough, township, or incorporated districts. These provisions will not be herein enumerated.

The first attempt to summarize the outlay for public appropriations to the hospitals and sanitariums was made by Fetter in 1902. In the census of 1910 the report relating to benevolent institutions, federal, state, county, and city appropriations is itemized for the hospitals and sanitariums in the various states. Some of the hospitals, of course, made no report. The term "public appropriation" as used there includes all funds received from federal, state, county, or municipal authorities, whether in the form of regular appropriations, subsidies, or specific grant.[4]

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[4] A portion of the census report which is quoted below gives the number and per cent distribution of institutions reporting the receipt of income from public appropriations, donations, and care of inmates; Table 71 gives the amounts computed under these heads; and Table 72 the average per institution of receipts in 1902:

FINANCES OF INSTITUTIONS

Class of Institution	No. Reporting	Public Approp. No.	% of total	Table 70, p. 79
Hospitals	1,918	876	45.6	
Dispensaries	574	61	10.6	

Income during 1910 from public approp. Table 71.

Hospitals .....$66,213,435 Amt. Rec. $17,906,508, % of total 27.0

Dispensaries .....$ 1,069,613 Amt. Rec. $ 217,992, % of total 20.4

Average per institution reporting 1910. Receipts from Public Approp. Table 72.

Hospitals $20,441. Dispensaries $3,574.

Amount of Public Appropriations received during the year 1910 by Hospitals and Sanitariums.

State	No. of Institutions	Amts. Received	State	No. of Institutions	Amts. Received
Maine	16	$ 78,047	West Virginia	4	$ 77,411
New Hampshire	14	30,200	North Carolina	11	61,548
Vermont	2	4,000	South Carolina	4	43,051
Massachusetts	50	1,726,574	Georgia	13	155,821
Rhode Island	8	149,520	Florida	6	26,305
Connecticut	25	248,427	Kentucky	13	180,838
New York	163	5,022,679	Tennessee	7	86,090
New Jersey	48	793,198	Alabama	4	53,346
Pennsylvania	149	3,657,647	Mississippi	7	78,050
Ohio	40	1,169,381	Arkansas	5	89,368
Indiana	23	147,931	Louisiana	5	229,823
Illinois	41	777,081	Oklahoma	..	.....
Michigan	28	218,773	Texas	7	67,929
Wisconsin	12	137,200	Montana	6	19,208
Minnesota	16	352,206	Idaho	1	180
Iowa	14	133,903	Wyoming	1	3,000
Missouri	9	671,953	Colorado	4	134,628

§ 220. **Alabama.** The State shall not engage in work of internal improvement nor lend money or its credit in aid of such; nor shall the State be interested in any private or corporate enterprise or lend money or its credit to any individual, association, or corporation. . . .

The Legislature shall not have power to authorize any county, city, town, or other subdivision of this State to lend its credit, or to grant public money or thing of value in aid of, or to, any individual, association, or corporation whatsoever, or to become a stockholder in any such corporation, association, or company by issuing bonds or otherwise.[5]

The board of revenue or the court of county commissioners of any county having over 35,000 is authorized to make appropriations for the county revenues "to aid maintaining the taking care of sick and wounded persons, who are unable to provide for themselves, in any hospital maintained in their respective counties exclusively for the care of the sick or wounded within the limits of such counties."[6]

Municipal corporations are authorized to aid, establish, set up and regulate hospitals and pesthouses anywhere in the county in which the city or town is situated. (Code 1907, Sec. 1277.) It is further provided that the board of mayor and aldermen, or other governing power, may make appropriations from the city revenues to aid in maintaining and taking care of the sick and wounded unable to provide maintenance or care "for themselves in any hospital maintained

State	No. of Institutions	Amts. Received	State	No. of Institutions	Amts. Received
North Dakota...	1	126	New Mexico ...	8	119,794
South Dakota...	1	420	Arizona	..	.....
Nebraska	3	24,164	Utah	2	10,995
Kansas	20	69,124	Nevada	..	.....
Delaware	4	1,885	Washington	8	78,312
Maryland	30	362,826	Oregon	5	44,560
Dist. of Col....	10	226,218	California	11	287,742
Virginia	17	54,576			

Note: Under the heading "Public appropriations" are included all funds received from federal, state, county, or municipal authorities, whether in the form of regular appropriations or subsidies or of specific grants, Table 64. Benevolent Institutions 1910, p. 73. Bureau of the Census, 1913.

[5] Ala. Const. 1901, Art. 4, Sec. 93.

[6] Code 1907, Sec. 735 amended 1911, p. 192, No. 190 to include counties having 25,000 or more.

in their respective cities, exclusively for the care of the sick or wounded within the limits of such cities."[7]

§ 221. **Arizona.** Neither the State, nor any county, city, town, municipality or other subdivision of the State, shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the State by operation or provision of law.[8]

§ 222. **Arkansas.** No county, city, or town, or other municipal corporation, shall become a stockholder in any company, association, or corporation, or obtain or appropriate money for, or loan, its credit to any corporation, association, institution, or individual.[9]

§ 223. **California.** No money shall be drawn from the treasury but in consequence of appropriations made by law, and "no money shall ever be appropriated or drawn from the State Treasury for the purpose or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the State as a state institution, nor shall any grant or donation of any property ever be made thereto by the State."

Under certain circumstances aid can be granted for the support and maintenance of minor orphans or half orphans, abandoned children, or aged persons in indigent circumstances, by uniform rule and a report of such expenditures is to be published with the session laws.[10]

Every city, county, city and county, or group of counties is authorized to establish and maintain a tuberculosis ward or hospital for the treatment of persons in the active stages of tuberculosis. State aid to the amount of $3.00 a week for each person therein supported at public expense is given if the ward of hospital conforms to the regulations of the State Bureau of Tuberculosis.[11]

§ 224. **Colorado.** No appropriation shall be made for

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7 Code 1907, Secs. 1277, 1460.
8 Arizona Const. 1912, Art. IX, Sec. 7.
9 Const. 1874, Art. XII, Sec. 5.
10 Const. 1879, Art. IV, Sec. 22.
11 Acts 1921, C. 861.

charitable, industrial, educational, or benevolent purposes to any person, corporation, or community not under the absolute control of the State, nor to any denominational or sectarian institution or association.[12]

The State Constitution provides that no appropriation is to be made for charitable, industrial, educational, or benevolent purposes, to any person, corporation, or community not under the absolute control of the State, nor to any sectarian institution or association. [13] In the case of Williamson vs. Board of Commissioners of Arapahoe County,[14] the Supreme Court decided that this provision relates to the disbursement of state funds only, and is not violated, therefore, by an act conferring on counties the power to use county funds, in the treatment and cure of their indigent inebriates.

By statute, cities of the second class are authorized to aid, foster, and make appropriations for associated charity organizations.[15] It is provided, however, that no portion of any money is to be given or loaned to any society or institution which may be "wholly or in part under sectarian or denominational control."

§ 225. **Connecticut.** By statute it is provided that all appropriations to hospitals by the General Assembly are to be expended under the direction of the Governor and the managers of the institutions for the support of charity patients, and "so used as to benefit the State as application may be made from time to time." A report of these expenditures is to be made biennially to the General Assembly. No part of the appropriation is to be paid any hospital unless it is in actual operation and unless the purpose for which it is to be expended (as for a building) is specified in the act making the appropriation.

The charge is not to exceed $4.00 a week except where there is contagious disease or where special care is required, in which cases the weekly compensation is to be agreed upon by the Comptroller in behalf of the State.[16] The Auditor of Public Accounts and the Comptroller audit annually the

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12 Const. 1876, Art. V, Sec. 34.
13 Mills Anno. Stats. 1912, Art. V, Sec. 34.
14 23 Colo. 87, 46 Pac. 117, 1896.
15 Mills Anno. Stats. 1912, Sec. 7237, L. 1899, p. 368.
16 Rev. 1918, C. 95, Sec. 1864.

accounts of every department and commission authorized to expend the state appropriation[17] and report of any irregularity is made to the Governor. The reports of hospital societies receiving state aid are to include September 30 and to be published by December 31 following.[18] This report is to include an itemized account of expenditures, names, salaries, number of patients, average number each year, and the total number of weeks of care of each patient.[19]

The sanitariums which are under private management and which receive state aid are to be inspected semi-annually by the State Tuberculosis Commission. The subsidy is not to exceed $4.00 per week per patient. The association owning and conducting such sanitarium is to maintain it and keep it in good condition, assuming all responsibility for the executive work thereof.[20]

Any hospital which receives state aid is to charge a uniform rate for paupers receiving medical attendance or being supported and cared for in such hospital.[1]

The representative of the towns and senators resident in any county may appropriate as for other county purposes, specific sums in aid of any public hospital located and maintained in such county. The amount so appropriated is to be expended as provided by law for other county expenses. If sufficient funds are not available, a tax may be levied.[2]

The appropriation for a pauper supported at a public hospital is not to exceed $10 a week.[3]

§ 226. **Delaware.** No county, city, town, or other municipality shall appropriate money to any private corporation, company, or person whatsoever.[4]

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17 Same, Sec. 175.

18 Same, Sec. 179.

19 Sec. 180 amended Sp. 1919, C. 315, p. 2984.

History of Sec. Rev. 1902, Sec. 2852; 1903 Ch. 44; 1905 Ch. 64; 1907 Ch. 163; 1909 Ch. 118; 1917 Ch. 400.

20 P. A. 1919, C. 230, p. 2887.

1 Revision 1918, Sec. 1632.

2 Revision of 1918, Sec. 1867, 1911 Ch. 183.

3 Revision 1918, Sec. 1632.

4 Const. 1897, Art. VIII, Sec. 4. "The Levy Court of New Castle is authorized and empowered to pay to the Homeopathic Association and the Delaware Hospital, both located in the city of Wilmington, the sum of $1.75 per day for the care, support, nursing, medical and surgical treatment of each person sent to and received in said respective hospitals . . . who would in the judgment of said Levy Court if not received and cared for be a charge on said county of New Castle; provided, however, that in no event shall a greater sum than $500 be paid in any one year either to the said Homeopathic Hospital Association or the said Delaware Hospital.

Appropriation is made for particular hospitals, as in the case of the Homeopathic Hospital Association and the Delaware Hospital, both of which are located in the city of Wilmington, Delaware.[5]

§ 227. **Florida.** The Legislature is not to authorize any county, city, borough, township, or incorporated district to obtain or appropriate money for any corporation, association, institution, or individual.[6]

§ 228. **Georgia.** The credit of the State is not to be pledged or loaned to any individual, company, corporation, or association, and the State shall not become a joint owner or stockholder in any company, association, or corporation.[7] The General Assembly is not to authorize any county, municipal corporation, or political division of this State to become a stockholder in any company, corporation, or association, or to appropriate money for, or to loan its credit to, any corporation, company, association, institution, or individual, except for purely charitable purposes.[8]

The Board of Public Welfare was created to visit, inspect, and examine once a year, or oftener, state, county, municipal, and private institutions and organizations, eleemosynary or charitable in character. All plans for new buildings are to be submitted to the Board if they are supported by public funds or collections.[9]

By special act the City of Savannah is authorized to appropriate money annually and pay for treatment, through its mayor and aldermen, "whenever any hospital in the City of Savannah, whether for white or colored, receives charity patients and makes no charge for treatment."[10]

§ 230. **Illinois.** Any county or city may by ordinance or order provide for the segregation and treatment of persons suffering from communicable venereal diseases. Such counties or cities may provide for the procurement and maintenance of hospitals, sanitariums, or homes or for their segregation or treatment from such institutions already established and pay

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[5] 23 Del. Laws, Ch. 40, Sec. 1; 23 Del. Laws, Ch. 41, Sec. 1.

[6] Constitution 1885, Art. IX, Sec. 10.

[7] Georgia Code 1911, p. 1616; Const. Art. VII, city, and 6561, Sec. 5 (6560).

[8] Same, Sec. 6, 5891.

[9] Laws 1919, No. 186, p. 222.

[10] Laws 1919, part III, title 1, No. 73, p. 1293, Sec. 2.

the cost and expenses thereof from the public funds of such county or city.[11]

It is lawful for any county or any city of the State to contribute money toward the erection, building, or maintenance and the support of any non-sectarian public hospital for the sick or infirm located within its limits.[12]

The case of the Washingtonian Home vs. Chicago,[13] which has been quoted previously, was a petition for mandamus by the Home to require the City of Chicago to pay certain funds . . . ten per cent of money received from licenses granted by the city for the right or privilege to sell spirituous liquors from January 1, 1893, to June 29, 1894.

The institution in question was organized under an act of the Legislature approved February 16, 1867, for the purpose of maintaining an inebriate asylum. The institution was a private corporation subject to no control by the State and with power to elect its own directors and adopt such by-laws as it might think proper for the management of its business. The Court held that this was a private corporation within the Constitution of 1870, forbidding donations by municipal corporations, although its charter provided that it might receive persons sentenced to a house of correction for drunkenness. It was further held that Art. 14 of the Constitution repealed by implication a previous statute requiring a city to pay annually a certain portion of its revenue to a private inebriate asylum. The fact that the city for twenty years after the adoption of the Constitution continued to make donations to the asylum, does not estop it from resisting further payments as unconstitutional.

A county by virtue of statute is authorized to appropriate money to aid a non-sectarian public hospital for the sick and infirm located within its limits. Such hospital is not prevented from being of a public character by the fact that those patients received by it, who are able to pay, are required to do so, or that it receives contributions from outside sources, so long as all the money it receives is devoted to the general

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11 Illinois 1919, Revised Statutes (Hurd), Ch. 23, Sec. 360, p. 299.

12 L. 1913, p. 135, 1916 Call. Sec. 1005, which repealed an earlier act of May 23, 1889, Hurd's Rev. Stats. 1919, Sec. 148, p. 254.

13 1895, 157 Ill. 414, 41 N. E. 893.

purposes of charity, and none of it goes to the benefit of any private individual or corporation organized for profit.[14]

§ 231. **Indiana.** It has been held that a county board has no authority to make an appropriation of any amount of the general fund of their county for the erection of a school building. If it is made, it may be enjoined by a taxpayer.[15] The power "to authorize and limit allowances," does not authorize county boards to "make allowances, at their discretion," for purposes unauthorized by law.[15]

By statute it is provided that whenever a hospital association has been organized and incorporated under the state laws with its principal office and place of business within one mile of the limits of any city of the fourth or fifth class, and such hospital association desires to construct within such city, or within a mile thereof, a hospital to be operated not for profit but as a benevolence, and it is found that the county is not provided with sufficient hospital facilities, then the common council is authorized to appropriate money to aid in the construction, equipment, and maintenance of hospital buildings and the purchase of grounds there;[16] such sum is not to exceed the sum already provided by the association. The board of trustees is to be non-political and non-sectarian and the board of county commissioners is to have the right to select at least one-half of the members of the boards of managers or trustees.[17]

Cities of 70,000 to 84,000 inhabitants in which there have been established a hospital or hospitals for the nursing and care of the sick, incorporated under the laws of the State for benevolence and not for profit, when the entire revenue is insufficient to support and maintain the hospital, and enable it to meet the needs of the community, a city which has no city hospital or other means of hospital care and nursing, may make appropriations for the support and maintenance thereof or aid in the support by the levy of a special tax not to exceed three cents on each $100 value of taxable property. The hospital property must be valued at $100,000 and if two

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[14] 1908, Fordham vs. Thompson, 144 Ill. App. 342.

[15] 1 R. S. 1876, p. 63, Sec. 7, act of May 27, 1852. 1876, Rothrock vs. Carr, 55 Ind. 334.

[16] Burn's Anno. Stats. 1918, Sec. 8858-A.

[17] Acts 1919, C. 131, p. 594; amended L. 1921, C. 15, p. 34.

or more hospitals qualify under the act, all appropriations must be made in equal amounts.[18]

§ 232. **Iowa.** The board of supervisors of any county, in which no county hospital has been established, may in its discretion establish one or more wards in any public or private hospital situated in the county for the use of the county under such regulations as may be agreed upon with the board having such hospital in charge. The tax is not to exceed one-half of one mill on the dollar of taxable property in the county.[19]

§ 233. **Kansas.** All private institutions of the State of a charitable nature, which shall receive state aid, are to be subject to the same visitation, inspection, and supervision by the State Board of Administration as are public charitable institutions. The State Board is to pass on their fitness annually and each institution is to make an annual report showing the condition, management, and competency to care for patients. Upon the satisfaction of the State Board as to the adequacy of facilities, and proper handling of funds, the State Board of Administration is to grant state aid, provided no institution operated for profit is to receive any of the funds. No more than $500 is to be paid to any one institution, and a list of the institutions receiving aid is to be given the Auditor of State who is authorized to draw warrants for the amount appropriated, upon vouchers sworn to by the president and secretary of the institution receiving aid, and approved by said Board of Administration.[20]

Cities of the second class with a population of 6,000 to 10,000 are authorized to levy a tax not to exceed three mills on the dollar for the purpose of aiding in the support of a public or city hospital owned or controlled by the city. Where the city does not own or control a public or city hospital, this tax may be levied or appropriated to any private hospital located in such city that will receive and care for patients without other charge, and will extend the charitable aid in medical care or surgical treatment to patients living in such city.[1]

§ 234. **Kentucky.** The General Assembly is not to

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[18] Gen. Laws 1921, C. 156, p. 393.

[19] Laws 1921, C. 83, p. 76.

[20] Laws 1921, C. 31, p. 59.

[1] G. S. 1915, Sec. 1738.

authorize any county or subdivision thereof, city, town, or incorporated district to become a stockholder in any company, association, or corporation or to obtain or appropriate money for, or to loan its credit to, any corporate association or individual except for . . . gravel roads.[2]

The Kentucky Court of Appeals has upheld the right to donate public funds to private institutions. The authority given the county courts to purchase lands and to establish poor houses has been held not compulsory and as a result did not abolish the power to provide for the poor in other modes. The Orphan Society of the City of Lexington provided for the support and education of a portion of the poor children of that city and the County of Fayette. In the case of Orphan Asylum vs. Fayette County[3] it was held that the Fayette County Court had authority at its court of claims to appropriate $1,500 toward paying the cost of additional buildings erected by the society. In the opinion of the Court: "While the county court has no authority to give away the money of the county, or to appropriate it, even to general charity, it certainly has power to apply it as necessary and proper means to the end of its enjoined duties; and, in so using it, its power is circumscribed only by a sound discretion within the scope of the limited range of taxation. According to this test it might have built and maintained the asylum for poor orphans, and consequently might rightfully contribute, as it did, a modicum to aid the institution in extending the building so as to accommodate a larger portion of the poor of the county, and who would not be otherwise cared for as well or not at all."

A Kentucky statute[4] appropriating money for the benefit of a sanatorium for consumptives, required the Auditor of Accounts to draw warrants for $5,600. This amount was twenty per cent of the sum expended by a sanatorium in equipment. The statute gave to other sanatoriums a sum annually equal to twenty per cent of the amount actually expended in equipment or enlargement, providing that no sanatorium receive more than $350 for each bed maintained

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2 Const. 1891, Sec. 178.
3 1869, 6 Bush 413.
4 Stats. 1911, Sec. 4711.

for patients. The Court[5] stated that the statute evinces a purpose by the State to contribute to the maintenance of institutions for consumptives after their actual establishment; and when such an institution enlarges its plant, it is entitled to the increased allowance, but the amount paid a sanatorium must not exceed twenty per cent of the sum expended in establishing the plant, or in the enlargement thereof, nor exceed $350 a year for each bed maintained for patients, though it is not necessary that a bed be occupied by a patient every day in the year.

By an act of the Legislature an appropriation was made to the Central Kentucky Lunatic Asylum to build a new house for colored patients, the act providing for the appointment of three commissioners by the Governor . . . one from each Superior Court district . . . to "supervise said improvements," and the money appropriated to be placed in their hands. These commissioners were directed to have plans and specifications made by a competent architect, and to let the work to the lowest bidder. Under the general law the buildings and grounds, as well as all the affairs of the asylum, were under the management of nine commissioners, required by law to reside in the county where the asylum was located. The Court held that the selection of a site for the new building was entirely in the hands of the regular commissioners, and the three special commissioners had no voice in the selection, as no such power is expressly conferred, and none can be implied from the powers that are expressly conferred.[6]

Municipal corporations have no powers but those which are delegated to them by the charter or law creating them, and when the power to do a certain thing is confirmed, or a duty is imposed upon a corporation, and the manner of executing the power of discharging the duty is not pointed out, the corporation may employ all means necessary to that end.[7]

Where a municipal corporation was authorized to elect a city physician, establish a city infirmary, provide for the

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5 1911, Assn. Sanatorium vs. James, 144 Ky. 144, 138 S. W. 377.

6 1888, Long vs. Central Kentucky Lunatic Asylum, 9 Ky. L. Rep. 699.

7 1868, Tucker vs. Board of Aldermen of the City of Virginia, 4 Nev. 20.

indigent, and make all necessary contracts and agreements for the benefit of the city and there was no infirmary belonging to the city, the Court held that it was competent for the corporation to contract for the care and maintenance of the indigent sick at a private hospital. This power to make all necessary provision for the maintenance of the indigent, and for medical attendance upon them, does not authorize the furnishing of medical attendance for the police or other city officers, who are not indigent.[8]

If a charter authorizes the election of a city physician but does not describe his duties, the corporation has the power to declare what such duties shall be, and if a municipal corporation, having the power to employ a city physician and fix his compensation, does employ such physician, but neglects to fix the compensation, he may recover his compensation.[8] A corporation, like an individual, may be bound upon an implied contract, provided it be within the scope of its corporation authority, and there is no distinction in this respect between a municipal and a trading corporation.[8] A municipal corporation, while acting within the scope of its powers, is as completely bound by implied as by written contracts.

§ 235. **Louisiana.** No money shall ever be taken from the public treasury and given directly or indirectly in aid of any church, sect, or denomination of religion . . . nor shall any appropriation be made for private, charitable, or benevolent purposes to any person or community. . . . This is not to apply to charity hospitals and public institutions conducted under state authority.[9]

The police juries of the several parishes (corresponding roughly to counties) are authorized under such regulations as they may prescribe, to appropriate annually and use from parish funds, sums of money not to exceed $300 in aid of charity hospitals or other similar institutions of adjoining states, when such charity hospitals are freely used, without cost, by the indigent sick or wounded citizens of such parishes.[10]

§ 236. **Maine.** The State Board of Charities and Corrections is to investigate and inspect all hospitals, sanitariums,

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8 1868, Same, 4 Nev. 20.
9 Constitution 1913, Art. 53.
10 Stats. 1920, Sec. 1595.

hospitals for the insane, etc., which derive their support wholly or in part from state, county, or municipal appropriations. Any private charitable institution may, upon application and request to the secretary of the Board in writing, be included in the list of institutions under inspection of said Board. The officers in charge of these institutions are to furnish such information and statistics as may be demanded.[11]

It has been held that a town has the legal power of making a contract for the support of its poor. "From necessity, prospective contracts must be made, or the poor of our towns would be destitute of food and raiment, and the common comforts of life."[12] By statute it is provided that towns at their annual meetings under warrant for the purpose, may contract for the support of their poor for a term not to exceed five years.[13]

Charitable and benevolent institutions are to submit itemized bills reviewed and allowed by the State Auditor, showing the name of the person cared for, the date on which service was rendered, the rate charged per day or week, before the state appropriation is paid. This bill for service is to be accompanied by a certification of the State Board of Charities and Corrections or its secretary.[14]

§ 237. **Maryland.** The Board of State Aid and Charities consists of seven members appointed by the Governor. . . . The Board is to investigate and consider the whole system of state aid to public and other institutions receiving aid in the State. It has power to make an investigation at any time into the condition and management of any institution financially aided by the State, and may demand such information, statistical or otherwise, as it may desire from the officers, directors, or employees of such institutions; or it may direct such an investigation to be made by a committee of its members or by its secretary. A report of the financial condition is to be sent to the Legislature.[15]

The Board has power to visit any institution receiving

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11 Rev. Stats. 1916, C. 147, Sec. 1, p. 1632; 1913, C. 196.

12 1833, Davenport vs. Hallowell, 10 Maine 317.

13 R. S. 1916, Ch. 28, Sec. 14, p. 555.

14 Laws 1917, C. 114, p. 87, amending R. S., C. 2, Sec. 82.

15 Pub. Gen. Laws 1904, Art. 88A, p, 1916, Sec. 1 et seq.; 1900, C. 679, Sec. 1; 1904, C. 540, Sec. 5.

financial assistance from the State, or with which the State has contracts, and thoroughly to inspect the management, buildings, and equipment thereof. The money appropriated is to be paid on a per capita basis.[16]

All associations or incorporated institutions which are maintained for industrial, educational, medical, humane, or charitable purposes and which secure any appropriations from the State Treasury under an act of the General Assembly, are, on or before February 1, before any part of the appropriation has been received, and annually thereafter, so long as it is the beneficiary of the State funds, to file with the Comptroller a full and accurate itemized statement of how the amount received has been expended. This account is to be sworn to by the president, vice-president, or treasurer of the association. The appropriations are payable one-half the first fiscal year and one-half the next fiscal year. The Comptroller is not to issue a warrant for payment until an account of the expenditures is filed to his satisfaction. No part of the appropriation is to be applied to the purchase of any land or the erection of any building, unless permission to purchase the land and erect the building, is directly given in the act making such appropriation.[17]

The Maryland Court of Appeals has held that the mayor and city council of Baltimore have no authority to make appropriations, by the exercise of the taxing power, to sustain or aid any private institutions, however benevolent and charitable in their character. This includes institutions which do not owe their creation to the municipal power conferred on the city of Baltimore, and were not created for the city by the Legislature of the State, as instruments of municipal administration, but which are separate and distinct corporations, composed of private individuals, and managed and controlled by officers and agents of their own, and over which the city has no supervision or control, and for the management of which there is no accountability to the city whatever. While the city of Baltimore has ample power delegated to it to provide for the foundlings, the insane, the indigent, infirm, and helpless, and for the correction of the vicious and vagrant

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16 Laws 1916, C. 705, p. 165.

17 Public General Laws 1904, p. 493, Sec. 41; Laws 1900, C. 239, Secs. 1, 2, 3.

portions of its population, such provision when made, must be under the control, and subject to the supervision of municipal authority.[18]

There must be authority, either plainly expressed in terms or necessarily implied, for making the appropriations in question, and "we fail to perceive how that authority can be deduced. . . . The power to erect or establish houses of correction or hospitals exists, it is true, but those institutions, when erected or established, are required to be governed by the city. They must not only derive their existence from the authority of the city, but they are made municipal institutions, and become agencies in the administration of municipal power. That the city has ample power delegated to it, and that it is a duty to provide for the foundlings, the insane, the indigent, infirm, and helpless . . . but whatever provision may be made must be under the control and subject to the supervision of municipal authority. The authority that is held and exercised in this behalf is a trust, as well for those who become the objects of it, as for those who support it by contribution in the form of taxes levied upon their property; and being an important public trust, it cannot be delegated beyond the power and discretion of those to whom it is confided. . . . If the city has not provided for such persons, or if they can be better taken care of and trained in those or such institutions, than in the institutions of the city, we can perceive no good reason why the city may not arrange and contract for such care and training. Such contracts appear to have been made in the cases of the 'Maryland Lying-In Asylum,' and the 'Eye and Ear Institutes'; and we think the power to make such contracts may well be conceded to exist. Its exercise, however, to be valid, must be with the limitation that the subject-matter of the contract be kept within the power and control of the municipal authority, and that complete accountability be provided for; and thus make the institutions contracted with, . . . municipal agencies."[18]

The fact that institutions may be under denominational or religious control, can in no manner affect their qualifications for assuming such relation to the city, or for the full

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[18] 1876, St. Mary's Industrial School for Boys vs. Brown, 45 Md. 310.

and faithful discharge of the duties that they may contract to perform. Charity, to say the least of the matter, is quite as likely to be fully and faithfully administered under such auspices as it could be under any other. It could, therefore, be no objection that the institutions are or may be under the control and influence of those belonging to any particular church or denomination.[19]

§ 238. **Massachusetts.** Any town not maintaining or managing a hospital may annually appropriate a sum not exceeding $500, to be paid to a hospital established in such town or vicinity thereof, for the establishment and maintenance of a free bed in the hospital for the care and treatment of persons certified by the selectmen to be residents and unable to pay for care and treatment.[20] By special act a town may be given the right to maintain a hospital (as in the case of Rockport).[1]

A manufacturing corporation may, by the vote of a majority of all its stock . . . appropriate not more than $5,000 or an annual sum of not more than $500, for the support of free beds in one or more hospitals in this Commonwealth for the use of its employees.[2]

§ 239. **Michigan.** A county in this State, either separately or in conjunction with other counties, may appropriate money for the construction and maintenance or assistance of public and charitable hospitals, sanatoriums or other institutions for the treatment of persons suffering from contagious or infectious diseases.[3]

Any sanatorium solely for the treatment of tuberculosis costing at least $10,000 may on application to the State Board of Health, be placed on the approved list of county sanatoriums and be entitled to state aid so long as its work is maintained in such manner as to meet the approval of the State Board of Health. An annual report is to be made by the institution to the State Board, a certificate to be issued and filed with the Auditor General and a warrant drawn. The total sum

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19 1876, Same, 45 Md. 310.
20 Acts 1915, C. 44, p. 39.
1 Acts 1920, C. 276, p. 286.
2 Gen. Acts 1921, Ch. 155, Sec. 12.
3 Constitution, Art. 8, Sec. 11.

paid to each sanatorium in any one year is not to exceed $3,000.[4]

The power granted to counties to appropriate money for the construction and maintenance or assistance of public and charitable hospitals, is limited to those institutions only where persons suffering from contagious or infectious diseases are treated. So far as Act No. 139 Pa., 1909 (3 Comp. Laws 1915, Sec. 10854, et seq.) purports to authorize counties to make appropriations for hospitals generally, and where contagious and infectious diseases are not treated, it is invalid. The words, "public and charitable institutions," as used in the Constitution, were held not to refer exclusively to those institutions owned by the municipality. It was further held in this case that "where it affirmatively appears from the record that plaintiff, a legally incorporated public charitable hospital, receives patients suffering from contagious diseases, and that the board of supervisors of Chippewa County adopted a resolution appropriating to it a certain sum of money which had been authorized by a vote of the people, mandamus will be issued to compel the treasurer of said county to pay the same. In the opinion of the Court, in "the grant of power found in Section 11 of Article 8, it is apparent that the Constitutional Convention recognized the essential public and charitable character of hospitals and the necessity for their maintenance in order to preserve the social and economic life of the State. However, . . . that grant of power to make appropriations is limited only to those institutions where persons suffering from contagious or infectious diseases are treated. The act, therefore, must be held to be broader than the grant of power in the provision itself and invalid so far as it purports to authorize counties to make appropriations for hospitals generally where contagious and infectious diseases are not treated."[5]

§ 240. **Minnesota.** In any county in the State where there is no county hospital, the county board is authorized to appropriate from the general fund as aid in the erection, construction, and maintenance in such county of a hospital for the treatment of sick, diseased, or injured persons, a sum

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[4] Acts 1917, No. 237, p. 504 amending Acts 1909, No. 139, Sec. 2, also 1919, C. 31.

[5] 1920, Sault Ste. Marie Hospital vs. Chippewa County Treasurer, 209 Mich. 684.

not exceeding $5,000, preference to be given in admission to patients in whole or in part public charges, and such as are sent by the county board.[6]

County commissioners in counties containing 25,000 inhabitants or less are authorized to appropriate money and aid in the maintenance or erection of hospitals. This appropriation is not to exceed $40,000 in any one year. The commissioners may require bond of at least the amount appropriated with sureties to be approved by the board, and so conditioned that such hospital shall be operated in a first-class manner for the year for which the appropriation is made or such time as the board may require, and also that such hospital shall receive at such price or compensation to be fixed or agreed upon, all persons who may be a charge upon the county.[7] Bond may be required to require operation in first-class manner and price or charge for dependent may be fixed.[8]

A county or group of counties wishing to establish a sanatorium may appropriate one-half the necessary funds and the State one-half for the site, erection, and equipment.[9] The amount contributed by the State is not to exceed $50,000. The tax levy for the county is not to exceed one mill on the dollar. In addition to this the State is to pay $5 per week to the county for each indigent case.

§ 241. **Mississippi.** Appropriation acts for the support and maintenance of the Mississippi State Charity Hospital,[10] Vicksburg,[11] Natchez,[12] etc., are made with the proviso that Vicksburg, Natchez, etc., shall appropriate a specified amount also. The superintendent of the hospital in each case is to render an itemized account of expenditures to the Legislature. The appropriation to the Houston Hospital at Houston, Mississippi, is contingent upon the building and operation of a charity ward to be used for charity patients only.[13] The Constitution of the State declares it to be the "duty of the Legislature to provide by law for the treatment and care of

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[6] Gen. Laws 1913, Sec. 706; 1913, C. 123, Sec. 1.

[7] Laws 1915, C. 326, p. 460; 1913, Sec. 707; 1909, C. 210, Sec. 1.

[8] Gen. L. 1913, Sec. 708; 1909, C. 210, Sec. 2.

[9] Minn. S. L. 1921, Ch. 218 amending G. S. 1913, Sec. 720.

[10] S. L. 1920, C. 39.

[11] Same, C. 40.

[12] Same, C. 41.

[13] Same, C. 48.

the insane; and the Legislature may provide for the care of the indigent sick in the hospitals in the State.[14]

The boards of supervisors of the several counties are empowered, in their discretion, to pay a sum not exceeding $50 per month to maintain a charity ward, in any hospital in their respective counties.[15]

§ 242. **Missouri.** The General Assembly has no power to make any grant or to authorize the making of any grant of public money or thing of value to any individual, association of individuals, municipal or other corporation whatsoever.[16]

The General Assembly has no power to authorize any county, city, town, or township, or other political corporation or subdivision of the State . . . to lend its credit or to grant public money or thing of value in aid of or to any individual, association, or corporation whatsoever. . . .[17]

The city of St. Louis employed the Hospital Association to maintain the insane, committed by the city to the care of the Association, and was held liable to pay for the service.[18] In the opinion of the Court: "Although the city may not have been under any obligation to provide for or maintain the insane within her limits, yet, if she employed others to do this service she was, on every principle of law and justice, obliged to make good her undertaking with them. The contract with the Hospital Association by the city register, was recognized by the city authorities, as appropriations were frequently made in compliance with it. The subsequent withholding of appropriations was not sufficient to discharge the city from liability under her contract. . . . When it was determined that the insane should be maintained no longer at the expense of the city, they should have been removed from the hospital by the corporate authority."

A city ordinance which gave the board of health a general supervision over the health of the city, was held to include

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14 Sec. 86, Art. 4, Constitution 1890; Constitution 1896, Art. XII, Sec. 27.

15 Code 1917, Sec. 3811; Laws 1916, C. 141.

16 Constitution 1875, Art. IV, Secs. 46, 47.

17 Same, Constitution 1875, Art. IV, Secs. 46, 47.

18 1852, St. Louis Hospital Association vs. City of St. Louis, 15 Mo. 593.

the power to rent a building to be used as a hospital, to protect the city from the infection of cholera.[19]

In counties exercising certain rights, the county court may appropriate each year, in addition to the tax for the hospital fund, not exceeding five per cent of its general fund for the improvement and maintenance of any public hospital so established.[20]

The case of Hitchcock vs. City of St. Louis[1] holds that none of the grants of corporate powers in the charter of the city of St. Louis authorizes the city council thereof to appropriate or give away the public moneys as pure donations to any private institution not under the control of the city and having no connection with it. The council may exercise implied or incidental powers whenever they are necessary to carry out those clearly expressed. But such donation is not germane or incident to any power granted. The members of the city council are trustees clothed with a trust, not for the corporation as such, but for the public who have confided the authority to them. The diversion of the money of the taxpayers for any purpose other than that which is expressed in the charter, is a perversion of the trust and an excess of authority.

§ 243. **Montana.** No appropriation shall be made for charitable, industrial, educational, or benevolent purposes to any person, corporation, or community not under the absolute control of the State, nor to any denominational or sectarian institution or association.[2]

§ 246. **New Hampshire.** The State Constitution provides "it shall be the duty of the Legislature and magistrates, in all future periods of the government, . . . to countenance and inculcate the principles of humanity and general benevolence, public and private charity . . . provided, nevertheless, that no money raised by taxation shall be granted or applied for the use of the schools or institutions of any religious sect or denomination."[3]

By a joint resolution $2,500 was appropriated for the

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19 1853, Aull vs. Lexington, 18 Mo. 402.

20 Missouri 1919 Rev. Stats., Sec. 12618; Laws 1917, p. 145.

1 1872, 49 Mo. 484.

2 Constitution 1889, Art. V, Sec. 35; Constitution 1912, Pt. II, Art. 82, Adopted 1793.

3 P. S. 1901, p. 45, Art. 82.

years 1919 and 1920 to provide medical and surgical treatment for children, indigent, crippled, and suffering from tuberculosis, to be expended under the direction of the State Board of Charities and Corrections.[4]

Towns may at any legal meeting, grant and vote such sums of money as they shall judge necessary, for the support of any incorporated hospital established therein. They may appropriate $300 annually for a hospital bed and $5,000 for the permanent endowment of a free hospital bed. The treasurer is to make a contract with the hospital concerning the admission of patients.[5]

§ 247. **New Jersey.** No county, city, borough, town, township, or village is to give any money or property or loan its money or credit to or in aid of any individual association or corporation.

No donation of land or appropriation of money is to be made by the State or any municipal corporation to or for the use of any society, association, or corporation whatsoever.[6]

An allowance of $365 per year is given by the State to indigents with incurable diseases to be applied under the direction of the Commissioner of Charities and Corrections.[7]

There is to be paid by the State Treasurer each year to each county which maintains tubercular patients, either in the county hospital or in a hospital of a municipality or an incorporated society under contract between such county and such municipality or incorporated society, the sum of $3 per week for each person maintained.[8] This amount is to be paid quarterly by the State Treasurer, and is not to exceed $3 per week for each person maintained in such institution by such county during the time of such confinement, except those patients paying full maintenance.[9]

In 1919 an investigation of all charitable institutions located and conducted in the State, supported in whole or in part from county, municipal, or state funds, was authorized.[10]

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4 Laws 1919, C. 225.

5 P. S. 1901, C. 40, p. 185; 1893, C. 42, Sec. 1; 1899, C. 13, Secs. 1, 2, 3.

6 Constitution 1844, Art. I, Secs. 19-20. Adopted 1875.

7 Acts 1911, C. 138, p. 201.

8 Laws 1916, C. 214, p. 434 amending act March 28, 1912.

9 Laws 1918, C. 140, p. 323 amending act of 1912.

10 Laws 1919, C. 150, p. 324. Acts 1914, p. 147, County aid.

It is lawful for the board of chosen freeholders of any county which has no hospital located therein and maintained by such county, other than the hospital or sick ward of the county poor home or other than the county tuberculosis hospital or sanitorium, or other than a county hospital or sanitorium for the insane, or other than a hospital for contagious or infectious diseases, to appropriate not exceeding $75,000 each year. This is to be included in the annual tax levy for the purposes of supporting and maintaining such patients as may be sent to any hospital or hospitals supported by private charity and located in such county; provided, this sum be used and applied for residents.[11]

The board of chosen freeholders of counties of the first class are authorized to make provision in any or all hospitals located in their respective counties for the support in such hospital having fifty or more beds, of which twenty or more are open to the public at all times for resident indigent patients. The appropriation is not to exceed $5,000 per year.[12]

Townships and other municipal bodies of the third class are authorized to vote moneys for the support of public patients in hospitals situated in said counties.[13]

It is lawful for any city, which has no hospital therein maintained by such city, to make an appropriation not exceeding $1,500 per year, to be included in an annual tax levy for the support and maintenance of indigent patients sent by order of any city physician, overseer of the poor, or other proper authority to any hospital or hospitals supported by private charity and located in the city.[14] Where this annual appropriation becomes insufficient, the board of finance and taxation may increase the annual appropriation at any time during the year to an amount not to exceed $15,000.[15]

Cities which have no hospitals maintained by the city may enter into contracts for the purpose of supporting, maintaining, and caring for indigent patients in any regularly incorporated hospital located in such city.[16]

In any city or town where the supply of water for the

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11 L. 1919, C. 193, p. 435 amending act of 1886.

12 Laws 1913, C. 312, p. 636.

13 R. S. 1910, p. 2762; P. L. 1894, p. 376.

14 R. S. 1910, p. 2761, Sec. 45.

15 R. S. 1910, p. 2761, Sec. 46; P. L. 1887, p. 174 as amending P. L. 1906, p. 546.

16 P. L. 1921, C. 81.

use of the inhabitants thereof is under the control of the municipal authorities, it is lawful for the board or authority having charge thereof in their discretion to cancel and remit any water rate assessed or charge made for the water economically and necessarily used by any hospital, supported and maintained by private benefactors without aid from the public funds.[17]

It is lawful for any borough, town or township which has no hospital to appropriate not exceeding $5,000 for care of the indigent as sent by the overseer of the poor or other proper authority to any hospital duly incorporated under the state law and located in such municipality or in any other municipality in the same or adjoining county.[18]

§ 248. **New Mexico.** No appropriation shall be made for charitable, educational or other benvolent purposes to any person, corporation, association, institution, or community not under the absolute control of the State, but the Legislature may, in its discretion, make appropriations for the charitable institutions and hospitals, for the maintenance of which annual appropriations were made by the Legislative Assembly of 1909.[19]

§ 249. **New York.** The assent of two-thirds of the members elected to each branch of the Legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes.[20]

No county, city, town, or village is to give any money or property, or loan its money or credit to or in aid of any individual, association or corporation. . . . This section is not to prevent such county, city, town, or village from making such provision for the aid or support of its poor as may be authorized by law.[1]

Payments by counties, cities, towns, and villages to charitable, eleemosynary, correctional, and reformatory institutions, wholly or partly under private control, for care, support, and maintenance, may be authorized, but is not to be required by the Legislature. No such payments are to be made for

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17 R. S. 1910, p. 3645, Sec. 664; P. L. 1885, p. 97.

18 Laws 1919, C. 18, p. 40 amending 1913, C. 38, p. 65.

19 Constitution 1912, Art. IV, Sec. 31.

20 Constitution 1894, Art. III, Sec. 20.

1 Constitution 1894, Art. VII, Secs. 10, 14.

any inmate of such institutions who is not received and retained therein pursuant to rules established by the State Board of Charities. Such rules are subject to the control of the Legislature by general laws.

All boards or officers of counties, cities, towns, and villages, which are authorized to appropriate and raise money by taxation and to make payments therefrom, are authorized, in their discretion, to appropriate and raise moneys by taxation, and from any money received from any other source and properly applicable thereto, to make payments to . . . charitable institutions wholly or partly under private control, for the care, support, and maintenance of their inmates, pursuant to rules established by the State Board of Charities. The boards of trustees of villages . . . in which there is no hospital located, and which are situated upon and join the boundary line of a neighboring State, are authorized, in their discretion, to appropriate and raise money by taxation and to make payments . . . to hospitals in such adjoining State for the purpose of maintaining a bed or beds in such hospital for the benefit of and to be used exclusively by the inhabitants of such village or town, pursuant to rules established by the State Board of Charities.[2]

The constitutional provision, Art. 8, Sec. 10, relating to aid, is interpreted in a case[3] which states that the provision of the State Constitution prohibiting, with certain exceptions, the giving or loaning of the money of the State "to or in aid of any association, corporation, or private undertaking," has reference to money raised by general taxation throughout the State, or revenues of the State, or moneys otherwise belonging to the State Treasury or payable out of it. The fact that money is raised by local taxation by the supervisors of a county, does not make it money of the State. In an action which was brought to recover the payments required to be made, it was held that this requirement was not abrogated by the constitutional provision nor yet by Sec. 11 of the same article which prohibits counties and cities from giving their moneys in aid of any individual association or corporation,

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[2] C. & G. 9, Consol. Laws 1909, Sec. 87, p. 2138; L. 1895, C. 754, Sec. 1.

[3] 1884, Shepherd's Fold vs. Mayor, etc., of N. Y., 96 N. Y. 137.

for the support of their poor "as may be authorized by law." The caring for the poor through the instrumentality of a private corporation was not prohibited, and it was said that the Legislature had power to authorize the city to provide for the burden assumed, by the payment of a gross annual sum. It was not essential, in the opinion of the Court, to the validity of the appropriation that the corporation to whom payment was authorized, should be one whose corporate powers were restricted to the receipt and support of the city and county poor.

In the case of White vs. the Inebriate's Home for Kings County[4] the taxpayers were seeking to restrain the officials of the city of Brooklyn from paying certain moneys to the Inebriate's Home of Kings County. By legislative act[5] it was provided that the city comptroller was to pay to the treasurer of the "Home" fifteen per cent of the moneys received for licenses granted and that the board of excise commissioners of Kings County pay the same amount from moneys received for licenses granted by them. It was claimed that the city charter prohibiting local and special acts repealed this,[6] but the Court did not concede this. It was further contended that Section 11, Article 8, of the Constitution was violated, which prohibits the "giving by a city of money or property in aid of persons, associations, or corporations," but makes an exception in the case of "aid or support of its poor as may be authorized by law." The Court held that there was no violation of the Constitution but, "rather, an effectuation of a municipal duty to aid the poor through a duly authorized instrumentality."

An amendment and slight change was introduced into the Constitution of 1894 which was held not to abrogate the purely administrative duty imposed upon the comptroller of the city of Brooklyn[7] of paying a portion of the excise moneys to the Inebriate's Home for Kings County, a private charitable and reformatory institution.[8] The opinion of the case is

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4 141 N. Y. 123, 35 N. E. 1092. Ct. of Appeals 1894.

5 Sec. 1, Ch. 687, Laws 1872; as amended Sec. 4, Ch. 169, Laws 1877.

6 Laws 1888, C. 583, Sec. 35.

7 Laws 1877, C. 169.

8 1897, People ex rel. Inebriates Home vs. Comptroller, 152 N. Y. 399.

entirely too long to be given extensively here, but the Court of Appeals traces therein, in detail, the development of the New York system of state aid. The establishment first of almshouses, supported by the public and supplemented by charitable foundations through private benefactors, orphan asylums, institutions for the deaf, blind, and lame, hospitals, etc. These institutions alone could not meet the demands upon them and "the State came to recognize its obligations, to perceive that these institutions were doing a work and discharging a duty which in a fuller measure devolved upon it. There sprung from this recognition the system of state or local aid to organized charities, and for a quarter of a century before the adoption of the present Constitution provision was made by law for public aid to charitable corporations. . . . The method by which state or public aid was furnished was not uniform. The greater part was given under laws vesting in counties, cities, and towns authority to raise money by taxation to pay for the care and support of inmates of these institutions, but imposing upon them no absolute duty. But in many cases, especially in the great cities of New York and Brooklyn, the Legislature itself imposed the duty and fixed the amount to be raised and designated the institutions among which the money was to be divided, and the general practice was to apportion to each of the institutions a sum per capita for each inmate supported in the institution whose support was considered as properly chargeable to the public. In other cases a gross sum was directed to be raised and paid to designated institutions for the care and support of inmates. . . . The system of charities needed to be guarded and supported against possible abuses. The institutions, as a rule, were admirably managed. with great fidelity, and in the spirit of the most disinterested benevolence. The framers of the new Constitution sought to promote the efficiency of the system of charities and to prevent abuses. The provisions which they framed proceeded upon these main lines. They constituted a State Board of Charities, changing the prior legislative board into a State Board protected by the Constitution. They invested the new board with the power of visitation and inspection of all charitable and eleemosynary institutions . . . (Art. 8, Sec.

11) . . . to makes rules and regulations for the reception and retention of inmates in these institutions, accompanied with a prohibition against public moneys being paid 'for any inmate of such institutions who is not received and retained therein pursuant to rules established by the State Board of Charities.' ''

In the case of People vs. Fitch[9] it was claimed that an institution for the blind receiving state aid was not a charitable institution within the supervision of the State Board of Charities. But the Court held it is not necessary that an institution be wholly charitable; it is enough if the institution is partly charitable in its character and purpose. In the opinion of the Court ''the unqualified declaration of the Constitution is, that payments by counties or cities to charitable institutions wholly or partly under private control for care, support, and maintenance may be authorized, but not required by the Legislature; but that no such payments shall be made for any inmate of such institution who is not received and retained pursuant to the rules established by the State Board of Charities. This declaration of the organic law is plain and unambiguous, and expressly forbids the appropriation of money by the counties and cities of the State to any such purpose, unless the inmates are received and retained in the manner stated. Its manifest purpose is to make all appropriations of public moneys by local political divisions or municipalities of the State to institutions under private control subject to the supervision and rules of the State Board of Charities.

''These considerations lead to the conclusion that the relator was, to an extent, a charitable institution and, so far as it was charitable, it was subject to the visitation of the Board of Charities and the rules adopted by it. No payment could have been properly made to the relator for the maintenance or support of any indigent inmate not received and retained by it pursuant to the rules of that board.''[10]

Any city or county in which a hospital duly incorporated is situated, may send to and support, in the same, such sick and disabled indigent persons as require medical or surgical

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[9] 1897, 154 N. Y. 14, 47 N. E. 983.

[10] 1897, Same, 154 N. Y. 14, 47 N. E. 983.

treatment.[11] By special act it may be provided that a town is given power to appropriate money to a hospital as in the case of Ticonderoga.[12]

§ 250. **North Carolina.** No county, city, town, or other municipal corporation shall contract any debt, pledge its faith, or loan its credit . . . except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein.[13]

§ 251. **North Dakota.** Neither the State nor any county, city, township, town, school district, or any other political subdivision, shall give or loan its credit or make donations to or in aid of any individual, association, or corporation, except for necessary support of the poor. . . .[14]

§ 252. **Ohio.** In all counties where there are not adequate hospital accommodations for indigent sick persons requiring medical or surgical care and treatment, or in which no appropriations of money are made for this specific purpose, it is the duty of the county superintendent of the poor, upon the certificate of a physician approved by the board of supervisors, to send all such indigent persons to the nearest convenient and suitable hospital; the incorporation and management of which have been approved by the State Board of Charities, provided a transfer to such hospital can be safely accomplished.[15]

The board of county commissioners of any county may enter an agreement with one or more corporations or associations, organized for charitable purposes, or with one or more corporations or associations organized for the purpose of maintaining and operating a hospital in any county where such hospital has been established, for the care of the indigent sick and disabled, excepting persons afflicted with pulmonary tuberculosis, upon terms agreed to by commissioners and corporations. Funds are not to be paid to sectarian institutions and county commissioners have authority to

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11 Consol. Laws 1909, Sec. 87, p. 2138.

12 Laws 1919, C. 104, p. 201, Cortlandt (1919, C. 67, p. 143, amending 1905, C. 263), and Ossining (Laws 1919, C. 432, p. 118, amending Laws 1917, C. 189).

13 Constitution 1876, Art. VII, Sec. 7.

14 Constitution 1889, Art. XII, Sec. 185.

15 Laws 1916, C. 483, p. 1291, Sec. 30, amending L. 1909, C. 46, Sec. 30.

employ necessary and properly qualified employees to carry out the provisions of the act.[16]

No charge is to be made by trustees or board for supplying water for any hospital, asylum, or other charitable institution devoted to the relief of the poor, aged, infirm, or destitute persons. The board may at any time revoke the grant of such free use of water.[17]

The board of county commissioners is authorized to contract with corporations or associations organized for charitable purposes, or with one or more corporations or associations organized for the purpose of maintaining and operating a hospital in any county where such hospital has been established, except that they may not contract to provide for persons with pulmonary tuberculosis. The amount is to be agreed upon and may be paid in one payment or installments, or so much from year to year as the parties stipulate. Nothing is to authorize the payment of public funds to a sectarian institution.[18]

§ 253. **Oklahoma.** No public money or property is ever to be appropriated, applied, devoted, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any . . . sectarian institution as such.[19]

§ 254. **Oregon.** Money is appropriated for the support of "homeless, neglected, and abused children, foundlings, and orphans under the age of seventeen years cared for by benevolent or charitable institutions in Oregon," and for the support of wayward girls and the care of maternity and venereal cases.[20] Any charitable institution wishing to secure state aid under this act is to make application to the State Board of Health, stating how many girls are cared for, length of time of operation, "and shall declare its willingness to submit to any reasonable health and sanitary rules and regulations prescribed by the State Board of Health." The State Board of Health is given visitorial powers.[1] State aid is

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16 Ohio Laws 1921, p. 77, amending Gen. Code, Secs. 31, 38-1.

17 Gen. Code, Sec. 14769.

18 Code 1921 (Throckmorton), Sec. 3138-1; Laws 1921, p. 77, amending Sec. 3138-1 Gen. Code.

19 Constitution 1907, Art. II, Sec. 5.

20 Laws 1921, C. 406, p. 801; also Laws 1920 (Olson), Sec. 5472 et seq.

1 L. 1919, C. 264, Sec. 68.

computed on the basis of $8 a week for each wayward girl and $10 for each maternity or venereal case.

§ 255. **Pennsylvania.** No appropriation is to be made to any charitable or educational institution not under the absolute control of the Commonwealth . . . except by a vote of two-thirds of all the members elected to each House.[2]

No appropriations are to be made for charitable, educational, or benevolent purposes, to any person or community, nor to any denominational or sectarian institution, corporation, or association.[3]

The Board of Public Charities may designate three visitors[4] in each county to act as visitors to visit, examine, and inspect the grounds of each institution and every part thereof, all its hospital and other arrangements, etc.[5] The Governor, Judges of the Courts of Record, members of the Legislature, and members of the Board of Public Charities are ex-officio visitors of certain named institutions.[6] The Governor, Judges of the Courts of Record in the counties of Luzerne, Carbon, and Schuylkill, and members of the Legislature are ex-officio visitors of the Middle Anthracite Coal Field Hospital. The same provision is made for other hospitals except that mine inspectors are included.[7]

Plans and specifications prepared by county commissioners for hospitals are to be submitted to the State Commissioner of Health for his approval.[8]

Reports are to be made to the committee on lunacy of the State Board of Charities as for State Hospitals for the Insane.[9]

No appropriation is to be made by the General Assembly, for any purpose whatsoever, to any unincorporated, charitable institution.[10] All appropriations made are a lien on the real estate of the institution. It is the duty of the association

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2 Constitution 1873, Art. II, Sec. 17.
3 Same, Art. III, Sec. 18.
4 Amended 1921, p. 425, Sec. 13, Subd. 2a.
5 Stats. 1920 (West), Sec. 2579; 1874, May 7, P. L. 119, Sec. 1.
6 Same, Secs. 14214, 14240, 14227, 14198, 14252, 14274.
7 Same, 15645, 15364, 15652, etc.
8 Same, Sec. 7396; 1917, May 24, P. L. 297, Sec. 3.
9 Sec. 11912, 1913, May 1, P. L. 148, Sec. 1.
10 1911, June 23, P. L. 29, D. C. 219, 1119 Sec. 1; Stats. 1920, Sec. 587.

within sixty days after appropriation is made to notify the Governor of acceptance.[11]

Any private hospitals and other charitable institutions are required to submit plans for the erection of new buildings to the Board of Public Charities for approval, and upon failure to do so are prohibited from receiving state appropriations, except for maintenance.[12]

The county commissioners of any county may appropriate moneys for the support of any hospital located within the limits of such county, which is engaged in charitable work, and extends treatment and medical attention to residents of such county.[13]

Any county, municipality, borough, or township which now has, or may hereafter supply, erect, and equip, a suitable institution for the maintenance, care, and treatment of its indigent insane, upon plans and specifications approved in writing by the Board of Public Charities is to receive from the State Treasury the sum of $2 per week for every indigent insane person so maintained, who has been legally adjudged insane and committed to such institution or who may be transferred from a state hospital.

The Board of Public Charities is to be satisfied about equipment, care, etc. Poor districts which supply hospitals are also entitled to state aid.[14]

The following case prohibits the use of public funds by sectarian institutions. The Constitution provides that no appropriation shall be made to any denominational or sectarian institution which plainly forbids state aid to institutions affiliated with a particular religious sect or denomination.

It seems that no appropriations were given to sectarian institutions prior to 1881 when $30,000 was set aside for the purpose. The amounts appropriated steadily increased except for the year 1889, and in 1919 reached a total of $2,120,689. Two governors vetoed the appropriations on the ground of

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11 Stats. 1920 (West), Sec. 590 et seq.; 1911, June 9, P. L. 736, Sec. 3.

12 Laws 1913, No. 247, p. 505; Stats. 1920 (West), Sec. 2578, 1919. June 20, P. L. 505, Sec. 3.

13 Laws 1915, No. 237, p. 532; Stats. 1920 (West), Sec. 11908.

14 Stats. 1920 (West), Secs. 14346, 14347; 1909, May 13, P. L. 535, Sec. I; 1895, June 26, P. L. 321, Sec. 1. Repealed 1919, p. 961.

violating the Constitution, others followed the construction of the Legislature. "Long persistence in a breach of the Constitution does not warrant the course pursued nor give it legality."[15]

The first appeal involved the Passavant Hospital of Pittsburgh founded by the Rev. W. A. Passavant some time prior to 1849, whose charter provided that no one was to be elected director or vice-director who was not a regular clergyman in the Evangelical Lutheran Church. This was amended in 1902 so that two members could be laymen. In 1919 a local board was created to be a purely non-sectarian body. "The board in question consists of five men, of different religious faiths, but the resolution creating it, expressly provides that its authority shall in no wise conflict with the internal management of defendant corporation. . . . " The Court decided that the local board so-called was an attempt to make the hospital appear as an undenominational institution, to enable it to obtain state aid, "but that which cannot be done directly the law will not permit to be accomplished by indirection, for such a course, when tolerated by the courts, only serves to bring the law into contempt. The appropriation having in fact been made to a sectarian and denominational institution cannot stand in law."

The next appeal involved St. Timothy's Memorial Hospital and House of Mercy at Roxborough, Philadelphia. The name, government, etc., were changed in an attempt to separate the institution from the control of St. Timothy's Church. "but, of course, the facts must be treated as they were at the time the act under attack was approved. While all persons, without distinction of race, color, or religion are admitted to defendant hospital, yet there can be no doubt that it is a 'sectarian' institution within the meaning of that term as used in the Constitution, therefore, the appropriation to it fails in law."

The appropriation to the Duquesne University of Pittsburgh, known originally as the "Pittsburgh Catholic College of the Holy Ghost," was likewise ruled out. It seems that religious ceremonies, according to the doctrines of the Roman Catholic Church, are conducted in the institution, but the

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15 1921, Collins vs. Lewis, Cite 120 Atl. 389.

students, many of whom are not of the Catholic faith. are not required to attend. In the high school department alone courses of instruction in the tenets of the Roman Catholic Church are given, which courses are elective. No part of the State's money was used for the purpose of supporting such instruction.'' The Court concludes that the institution in question is sectarian and denominational within the inhibition of the Constitution, and may not receive state aid.

The charter of the Dubois Hospital Association indicates no sectarian purpose, but the property is owned and operated by another Pennsylvania Corporation called the ''Sisters of Mercy of Crawford and Erie Counties.'' The Sisters of Mercy operate the hospital under contract with the first mentioned corporation, which among other things provides that the institution shall be '' 'non-sectarian,' opening its doors to all alike, without distinction as to creed, color, or race.'' The Court, however, held the hospital ''to be under the control of a well-known, much-respected, religious order, and the State's money cannot be permitted to go through this agency of the Hospital Association to this sectarian institution. . . .''

The Jewish Hospital Association of Philadelphia was designated sectarian and was held not entitled to an appropriation. The hospital is confined to persons of Jewish faith, but neither the chief surgeon nor the head nurse was a Jew. The great body of the patients are outside that faith, and none of them is obliged to attend religious ceremonies or worship of any kind. The fact remains, however, that this hospital is a sectarian institution according to the sense in which the term is used in the Constitution.

''There can be no doubt that all the institutions at bar are worthy charities; but it is equally clear they are within the inhibited class, so far as state aid is concerned. . . . Those who adopted the restrictions against appropriating money to sectarian institutions must change the rule, if desired, either through an amendment to the present Constitution, or by making a new one. Neither the Legislature acting alone, nor the courts have power so to do.''[16]

§ 256. **Rhode Island.** By special acts sums of money may be granted to particular hospitals as in the case of the

[16] 1921, Collins vs. Lewis, 120 Atl. 389. Penna. See also, 1921, Collins vs. Kephart (Pa.), 114 Atl. 360.

"Hill's Grove Branch" of St. Joseph's Hospital[17] or to certain specified hospitals as the Rhode Island Hospital of Providence, St. Joseph's Hospital of Providence, Park Place Hospital of Pawtucket,[17] a similar appropriation was made in 1918.[17]

Towns may, at any legal meeting, grant and vote such sums of money as they shall judge necessary for the use of hospitals. This money is to be expended and paid under such limitations and conditions as may be prescribed by the town council.[18]

By special act the city of Providence is authorized to appropriate annually $2,000 toward the support of the Providence Floating Hospital Association,[19] and also the town of Bristol is authorized to appropriate money for the use of the Rhode Island Hospital.[20]

§ 257. **South Carolina.** Institutions for the care of the insane and poor shall always be fostered and supported by this State and shall be subject to such regulations as the General Assembly may enact.[1]

§ 258. **South Dakota.** Neither the State nor any county, township, or municipality shall loan or give its credit or make any donations to or in aid of any individual association or corporation except for the necessary support of the poor.[2]

§ 259. **Tennessee.** "But the credit of no county, city, or town shall be given or loaned to or in aid of any person, company, or corporation except upon an election to be first held by the qualified voters of such county, city, or town and the assent of three-fourths of the votes cast at said election.[3]

§ 260. **Texas.** The Legislature shall have no power to make any grant or authorize the making of any grant of public money to any individual, association of individuals, municipal or other corporations whatsoever.[4]

Corporations, domestic and foreign, may contribute to any bona fide association, incorporated or unincorporated,

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17 Acts 1919, pp. 332, 338 and 1918. p. 311.

18 Acts 1918, C. 1629, p. 33, amending Gen. Towns, C. 46, Sec. 4.

19 Acts 1918, p. 182.

20 Same, p. 187.

1 Constitution 1895, Art. X, Sec. 1.

2 Constitution 1889, Art. XIII, Sec. 1.

3 Constitution 1870, Art. II, Sec. 29.

4 Constitution 1876, Art. III, Sec. 50.

organized for and actually engaged for one year prior to such contribution in purely religious, charitable or eleemosynary activities.[5]

§ 261. **Utah.** Ten thousand dollars was appropriated out of the general funds as state aid in establishing free dispensaries and clinics. The appropriation is to be expended by the State Board of Health with the approval of the State Board of Examiners as state aid to state, county, or city dispensaries and clinics conducted under the direction of medical societies recognized by the State Board of Health, and in conformity with the standards prescribed by the Board. The dispensaries and clinics participating in the appropriations are to provide medical, surgical, and other curative means and dental service free. This service is to be provided through voluntary professional service by legal practitioners.[6]

§ 262. **Vermont.** . . . all religious societies or bodies of men that may be united or incorporated for the advancement of religion and learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities and estates, which they in justice ought to enjoy, under such regulations as the General Assembly of this State shall direct.[7]

State aid is provided for tuberculosis hospitals. Persons desiring treatment are to be examined by physicians as designated and by selectmen as to financial condition. The Governor directs the time and place of treatment in the state or county institutions or in other institutions of similar character. The Auditor of Accounts draws an order for treatment on the certificate of the Governor. The expense is to be defrayed by the town or city in which he resides. Payments by the State are not to exceed $10 per week. Trustees, quarterly, are to send a sworn statement of the number of patients treated, etc.[8]

The State may establish tuberculosis hospitals or wards for the treatment of tuberculosis patients in connection with any hospital in the State, or may assist in the maintenance of

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5 Laws 1917, C. 15, p. 25.
6 Laws 1919, C. 49, p. 132.
7 Constitution 1793 and 1913, Ch. I, Sec. 64.
8 Gen. Laws 1917, C. 190, p. 734; 1917, No. 96, Sec. 1 et seq.

such hospitals when in the opinion of the Governor and the State Board of Health there is need.[9]

A town may, at any legal meeting of the voters thereof, when an article for such purposes has been duly inserted in the warning of such meeting, appropriate such sums of money as it deems necessary for the support of any non-sectarian hospital established therein and which is incorporated.[10]

A town at any meeting duly warned for that purpose, and a city by vote of the mayor and aldermen thereof, may appropriate such sums of money, not exceeding $500, for a free hospital bed for a period of not less than one year, and may appropriate such sums of money, not exceeding $5,000, for the permanent endowment of a free hospital bed, as such city or town deems advisable, for the use of the inhabitants of such town or city as are entitled to receive assistance by reason of their indigent circumstances.[11]

§ 263. **Virginia.** The General Assembly is not to make any appropriation of public funds, of personal property, or of any real estate to any church, or sectarian society, association, or institution of any kind whatever, which is entirely, partly, directly or indirectly, controlled by any church or sectarian society, nor shall the General Assembly make any like appropriation to any charitable institution which is not owned or controlled by the State, except that it may, in its discretion, make appropriations to non-sectarian institutions for the reform of youthful criminals; but nothing herein contained shall prohibit the General Assembly from authorizing counties, cities, or towns to make such appropriations to any charitable institution or association.[12]

§ 264. **Washington.** No county, city, town, or other municipal corporation is to give any money or property or loan its money or credit, to or in aid of any individual, association, company, or corporation except for the necessary support of the poor and infirm. . . .[13]

The State Treasurer is to pay quarterly to the counties

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9 Vermont Laws 1921, C. 119, amending Sec. 4377.

10 Gen. Laws 1917, C. 173, Sec. 4034; P. S., Sec. 3532; 1896, No. 62, Sec. 1.

11 Gen. Laws 1917, Sec. 4035; 1915, No. 118, Sec. 1; 1900, No. 136, Secs. 1, 2.

12 Constitution 1902, Art. V, Sec. 67.

13 Constitution 1889, Art. VIII, Sec. 7.

maintaining tuberculosis hospitals $5 per week for each person in such institution during confinement.[14] No institution is entitled to state aid, if it is disapproved by the State Board of Health, and such disapproval is certified to the State Auditor.[15]

Hospitals operated by municipalities of the first class or hereafter established and maintained for the treatment of tuberculosis exclusively, may receive state aid, except that institutions are not required to operate under a board of managers and are not subject to the provisions concerning the charge to patients, except those patients from whom the institution receives state aid.[16]

§ 265. **West Virginia.** In the general appropriation act, there are items appropriating sums to individual hospitals not maintained by the State, the money to be paid on the approval of the State Board of Control, as the Wheeling Hospital, Wheeling; the Ohio Valley General Hospital, Wheeling; the King's Daughters' Hospital; and the City Hospital of Martinsburg, etc.[17] The State Board of Control has the power of visitation and inspection, etc.[18]

§ 266. **Wisconsin.** The State Board of Control is to investigate and supervise all charitable, curative, and reformatory institutions of every county and municipality. The establishment, the purchase of the site, etc., are subject to the approval of the State Board. If a deficiency is found, it must be corrected or state aid will be refused.[19]

The case of State ex rel. McCurdy vs. Tappan[20] deals with the purposes for which a municipality may levy taxes and the power of the Legislature to compel such levy. It was there said that the Legislature may authorize a town or other municipality to levy taxes therein for public purposes not strictly of a municipal character, but from which the public has received or will receive some direct advantage, or where the tax is to be expended in defraying the expenses of the government, or in promoting the peace, good order,

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[14] Laws 1919, C. 35, p. 63, amending Code, Sec. 5554-10.

[15] L. 1915, C. 80, p. 254.

[16] Laws 1913, C. 173, Sec. 14.

[17] Acts 1919, p. 18, Sec. 64 et. seq.

[18] 1915, C. 31, p. 275.

[19] Laws 1919, C. 328, Sec. 4616, p. 388. Settlement between state and county for maintenance of inmates. Same Sec. 46.10.

[20] 29 Wis. 664, 1872.

and welfare of society, or in paying claims founded upon natural justice and equity, or upon gratitude for public services or expenditures, or in discharging the obligations of charity and humanity. The Legislature, however, has no power to compel a municipality to levy taxes for any of these purposes, until the liability to pay the same has been adjudged by a court of competent jurisdiction.

§ 267. **Wyoming.** No money of the State shall ever be given or appropriated to any sectarian or religious society or institution.

No appropriation shall be made for charitable, . . . educational, or benevolent purposes to any person, corporation, or community not under the absolute control of the State, nor to any denomination or sectarian institution or association.[1]

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[1] Constitution 1889, Art. I, Sec. 19.

CHAPTER VIII

THE HOSPITAL AS A NUISANCE

§ 275. **Definition of Nuisance.** The term "nuisance," coming from the French **nuise,** in a broad sense means anything that works an injury, harm, or prejudice to the individual or the public. Legally, anything which endangers life and health, gives offense to the senses, violates the laws of decency, or obstructs the reasonable and comfortable use of property, has been declared by the courts to be a nuisance.[1] There are three kinds of nuisances: those which are nuisances per se; those which are not in their nature nuisances but which may become so by reason of their locality, surroundings, or the manner in which they are conducted or managed; and those which in their nature may or may not be nuisances. A nuisance may be public when it violates public rights and produces a common injury, and private when it violates private rights only and produces damages to one person or a few persons. A mixed nuisance is one both public and private in effect—public because violating public rights and injuring many persons, and private because producing special injury to private rights.

§ 276. **Abatement of a Nuisance.** The abatement of a nuisance means the removal of conditions obnoxious to public health, safety, morals, order, or to other public rights, which are, consequently, contrary to law.[2] The abatement may be ordered after notice of hearing before a court or it may be summary in character. Under no circumstances must the abatement extend beyond the suppression or removal of the obnoxious condition, and as a rule the power to abate should rest upon statutory authority. The power to abate nuisances is frequently found in city charters, but in order to be effective

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1 20 R. C. L. 380.
2 II Cyc. of Amer. Govt., 564 Freund on Abatement of Nuisances.

must be delegated to administrative officers by ordinance. "The actual existence of a nuisance is, however, a jurisdictional prerequisite to the action of the officer, who, according to the better views, is personally liable for destroying property, which is not in fact a nuisance. The aggrieved individual has consequently his day in court, after, if not before, the invasion of his property rights, and of this day in court the Legislature cannot deprive him. There is, however, no redress either against the municipality or the State for the unwarranted abatement of an alleged nuisance."[3]

There are two steps developed in connection with the nuisances: first, the recognition, declaration, or ascertainment of the existence of the nuisance in point of fact; second, the removal or abatement of the nuisance. The first step in large part is discretionary, while the second step may be termed ministerial. That is, if a nuisance is defined and declared, does it of necessity follow that it will be abated?

§ 277. **Power of Legislature to Declare a Nuisance.** In general it is conceded that the Legislature may declare nuisances only those things likely to become offensive to public health and comfort by improper use, in addition to the nuisances at common law. That is, in the exercise of the police power, the Legislature may prohibit a thing which may never have been offensive and injurious in the past. One of the leading cases dealing with this power is that of Mugler vs. Kansas. There it was said that the State Legislature, which prohibits the manufacture of liquor within the limits of the State, to be sold or bartered for general use as a beverage, does not necessarily infringe any right, privilege, or immunity secured by the Constitution of the United States, or by the Amendments thereto; is fairly adapted to the end of protecting the community against the evils which result from excessive use of ardent spirits; and is not subject to the objection that, under the guise of police regulations, the State is aiming to deprive the citizen of his constitutional rights.[4]

A prohibition upon the use of property for purposes that are declared by valid legislation to be injurious to the health, morals, or safety of the community, is not an appropriation

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[3] 11 Cyc. of Amer. Govt. 565, Freund on Abatement of Nuisances.
[4] 123 U. S. 623 (1887).

of property for the public benefit, in the sense in which a taking of property by the exercise of the State's power of eminent domain is such a taking or appropriation.[4]

The destruction, in the exercise of the police power of the State, of property used in violation of law, in maintaining a public nuisance, is not a taking of property for public use, and does not deprive the owner of it without due process of law.

In addition to its own power to declare the existence of a nuisance, the State may grant such power to the municipal corporations. In general, a municipality cannot declare that to be a nuisance which is not in fact a nuisance. But the grant of power to declare what constitutes a nuisance and to prevent the same authorizes the municipality to declare anything a nuisance which is so per se or which by reason of its location, management, or use, may or does become a nuisance within common law or statutory definition. Where the thing may or may not be a nuisance, depending upon its location, management, or use, requiring in the determination of the question the exercise of judgment and discretion on the part of the municipality, the determination of the question by the municipality has been generally held to be conclusive upon the courts.[5]

§ 278. **Nuisance a Question of Fact.** Health boards and authorities have also wide powers in the abatement of nuisances. Where express power is given and such action is necessary to protect the public health, the action of the board is frequently upheld. But the findings of fact by the authorities as to the existence of a nuisance in a particular case is not conclusive upon the courts, which will interfere to review and determine the actual existence of a nuisance.[6]

The general trend of opinion seems to be that whether or not the erection or management of a hospital, or allied institution, is a nuisance, is primarily a question of fact to be determined in connection with the surrounding circumstances. Each case must, to a certain extent, depend upon its own special facts.

Where a smallpox hospital is rightfully located and well

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[5] 20 R. C. L. 390. See also 1887, Mugler vs. Kansas, 123 U. S. 623.

[6] 20 R. C. L. 391.

conducted by a municipality, there can be no recovery by a property owner for the depreciation in value of his property caused by its location in the neighborhood. In the opinion of the Court: "We can see no difference, in principle, between the right of a city to establish and maintain a smallpox hospital, and to erect and use jails, fire-engine houses, calabooses, and the like. Greater care might be required in the maintenance of one than the other, and different considerations would undoubtedly enter into the selection of a site of a pesthouse than of the fire-engine house or jail; but the city would be liable only for an abuse of authority or an unwarranted exercise of discretion in locating or maintaining the same, having reference to the present necessities, the crowded condition of the locality in which they are placed or maintained and other pertinent facts and circumstances. The declaration does not seek to charge any act of omission in this regard."[7]

An action was brought against the board of commissioners, for keeping and maintaining a nuisance, and to have it abated. The complaint, among other things, alleged that the defendant had erected and was maintaining a pesthouse, on the grounds belonging to the county and near a dwelling house owned and occupied by the plaintiff. To the pesthouse were brought persons infected with malignant diseases, who were treated therefor, by order of the defendant. For this reason the premises of the plaintiff became unhealthy and the plaintiff's family became infected with the same disease, and the occupancy of the plaintiff's premises unsafe and unpleasant. It was held by the Court on demurrer that the complaint was sufficient and the defendant liable.[8]

In a populous or built-up community a hospital or pesthouse is undoubtedly a nuisance, as is shown in the following case, but it is not a nuisance per se even when maintained for the treatment of communicable diseases.[9] A county erected a pesthouse, together with other structures, which

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7 1900, Frazer vs. Chicago, 186 Ill. 480, 57 N. E. 1055.

8 1878, Hoag vs. Vanderburgh County, 60 Ind. 511, 28 Am. Rep. 654. See section on Liability of State and Municipal Corporations for Maintaining Nuisances for further discussion of this case.

9 This does not contain a discussion of the municipal zoning laws.

destroyed the value of the plaintiff's land and the enjoyment of the same. This complaint, the Court held, was not subject to demurrer. In the opinion of the Court:[10] "It is not a sufficient answer to a person whose property has been injured or destroyed to say simply that the act complained of was done in the exercise of the police power for the preservation of the public health. It cannot be said, no matter how comprehensive the power, that a municipality might locate a pesthouse in the midst of a thickly settled neighborhood, or that the power to erect a pesthouse carries with it the further power to locate it at a place where it will injure others. The infliction of an injury upon another is not naturally the result of the erection of a pesthouse, nor is it an inevitable consequence of an exercise of the power to erect and maintain it. The right to do a particular act does not essentially carry the right to do it so as to inflict injury upon an innocent individual. The citizen does not hold his property subject to the exercise of the police power by the State or municipalities to which it has been delegated, but he holds it subject to the proper exercise of such power. And in determining whether there has been a proper or an unwarranted exercise of discretion in locating a pesthouse at a particular place. regard must be had to the location itself, the present necessities of the particular case, and other pertinent facts and circumstances."

A hospital is not a nuisance per se but may become so by reason of careless management, and the establishment of a cancer hospital in a residence neighborhood in near proximity to dwellings, may be enjoined at the instance of one owning and occupying adjacent property.[11] A hospital for the treatment of patients afflicted with cancer was about to be established in Kansas City, Kansas, in a building formerly used as a dwelling house. The owner and occupant of adjacent premises brought an action to enjoin its establishment because, in view of the character of the neighborhood, its presence there would render it in legal contemplation a nuisance. A permanent injunction was granted and the

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[10] 1904, Anable vs. Montgomery County, 34 Ind. App. 72, 71 N. E. 107.

[11] 1910, Statler vs. Rochelle, 83 Kans. 86, 109 Pac. 788.

defendant appealed. "Witnesses familiar with real estate testified that its establishment would cause material depreciation in rental and market value of the surrounding property and several physicians testified that there would be some danger of the communication of the disease by means of insects, etc.

"In the present state of accurate knowledge on the subject, it is quite within bounds to say that, whether or not there is actual danger of the transmission of the disease under the conditions stated, the fear of it is not entirely unreasonable.

"Much the same reasoning may be applied here. The question is not whether the establishment of the hospital would place the occupants of the adjacent dwellings in actual danger of infection, but whether they would have reasonable ground to fear such a result, and whether, in view of the general dread inspired by the disease, the reasonable enjoyment of their property would not be materially interfered with by the bringing together of a considerable number of cancer patients in this place. However carefully the hospital might be conducted, and however worthy the institution might be, its mere presence, which would necessarily be manifested in various ways, would make the neighborhood less desirable for residence purposes, not to the over-sensitive alone, but to persons of normal sensibilities. The Court concludes that upon these considerations the injunction was rightfully granted."[12]

A hospital of gracious design, with modern equipment and a high personnel, erected for the care of crippled children, is not a "nuisance per se." A law forbidding the erection along certain streets of enumerated trades and businesses inherently dangerous, notoriously offensive, or sharply obnoxious, does not include, either in its general terms or as a business, a hospital for the care of crippled children.[13]

"The proposed hospital building is to be of gracious design, with modern equipment, and directed by a high personnel. Its presence cannot of itself be held to be a nuisance

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12 1910, Statler vs. Rochelle, 83 Kans. 86, 109 Pac. 788.

13 1915, Hall vs. House of St. Giles the Cripple, 91 Misc. Rep., 122, affd. 158 N. Y. S. 117.

per se. Nor can the coming and going of crippled children in search of care and cure, though undoubtedly pain and distress will sometimes be caused by the sight to those living near by. Giving full credence to the sincerity of plaintiff's fears of consequences, the settled rules of equity preclude relief upon the theory that the erection of such a hospital will constitute a private nuisance. Very likely these apprehensions will never be realized, but, should an obnoxious or improper use cause the institution to develop into an actual nuisance, relief will then be available. At this time, however, plaintiff's right to an injunction must rest upon the claim of a statutory restriction."

§ 279. **Erection May be Restrained.** When there is direct, positive, and specific evidence that the erection and use of a hospital for the treatment of tuberculosis in a particular residential locality in the manner proposed will be a source of real danger to the lives and health of people living in that vicinity, such use will be restrained, although defendant makes a specific response; a large part of his supporting evidence being general in its terms and made without reference either to the special locality or to the special manner in which the particular hospital is to be constructed and carried on.[14]

When an injunction is sought to restrain that which it is apprehended will create a nuisance, the proof must show that the apprehension of material and irreparable injury is well grounded upon a state of facts from which it appears that the danger is real and immediate.[15]

When a hospital is conclusively shown to be a nuisance, its status as a charitable institution is no defense, in an action to enjoin its maintenance.

§ 280. **Noise as a Nuisance.** In a suit to enjoin the

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[14] 1908, Cherry vs. Williams, 147 N. C. 452, 61 S. E. 267.

[15] "The general rule is that an injunction will be granted only to restrain an actual existing nuisance, but where it can be plainly seen that acts which when completed will certainly constitute or result in a grievous nuisance, or where a party threatens or begins to do, or insists upon his rights to do, certain acts, the courts will interfere, though no nuisance may have been actually committed, if the circumstances of the case enable the Court to form an opinion as to the illegality of the acts complained of and the irreparable injury which will ensue." 1923, Wergen vs. Voss, 179 Wis. 603, 192 N. W. 51.

defendant from conducting its hospital to the injury of complainants, who owned a residence situated but a few feet distant from the hospital, it appeared that objectionable noises and cries of pain of hospital patients disturbed the complainants day and night and depreciated the value of their property. The Court properly enjoined defendant from using its buildings as a hospital during the continuance of an existing internal construction and while the emergency operating room was maintained in close proximity to such residence.[16]

Where a noisy nuisance is complained of, it is a question of degree and locality. "If the noise is only slight and the inconvenience merely fanciful, or such as would be complained of only by people of elegant and dainty modes of living, and inflicts no serious or substantial discomfort, a court of equity will not take cognizance of it. No one has a right to complain that his next-door neighbor plays upon a piano at reasonable hours, or of the cries of children in the neighbor's nursery, or of any of the ordinary sounds which are commonly heard in dwelling houses. On the other hand, if unusual and disturbing noises are made, and particularly if they are regularly and persistently made, and if they are of a character to affect the comfort of a man's household or the peace and health of his family, and to destroy the comfortable enjoyment of his home, a court of equity will stretch out its strong arms to prevent the continuance of such injurious acts."[17]

§ 281. **Maternity Home as a Nuisance.** An institution for the reception and reformation of unfortunate girls is not a nuisance per se, and, under the evidence it is held that the institution complained of in this case did not, as conducted, constitute a nuisance.

Under an Act of Congress of April 30, 1908,[18] prohibiting the establishment in the District of Columbia of any private hospital or asylum, unless or until licensed by the Commissioners of the District, an institution for the reception of

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16 1914, Kestner vs. Homeopathic Medical and Surgical Hospital, 245 Pa. St. 326, 91 Atl. 659.

17 1888, Ladies' Decorative Art Club's Appeal, 10 Sad. 150, 13 Atl. 537. Quoted in 1914, Kestner vs. Homeopathic medical and surgical hospital, 245 Pa. St. 326, 91 Atl. 659.

18 35 St. at L., C. 148.

unfortunate girls and their children, is not a hospital or asylum, no children being born in the institution.[19]

"It is evident, we think," said the Court, "that Congress primarily had in mind the protection of the sick and infirm, as evidenced by the provision for inspection by the health officer and his agents of any institution established under authority of the act. . . . The purpose of that institution appears to be the reformation of unfortunate girls; . . . children are not born at the institution, and are not kept there except in connection with the sojourn of their mothers there. These mothers are not ill when they enter the institution nor are their children; in other words, it is a moral, and not a physical, improvement that is sought."

The term "asylums" as used in the act, was intended to denote and does denote an institution in the nature of a hospital. "The further contention is made, however, that regardless of the applicability of said act of 1908 to the appellee institution, it is, as conducted, a nuisance, and hence subject to the restraining hand of the Court. From our brief review of the evidence, we think it apparent that appellant really objects to the character of this institution, more than to the manner in which it is conducted. . . . The evidence of appellee, we think, sustains the averment in its answer that it conducts its institution with the utmost care and with a due regard to the comfort and welfare of those living in the neighborhood; . . . that there are no noises save such as are usual and natural in homes where young people are assembled and where infants are gathered."[19]

In view of the meagerness of the evidence of appellant upon this question, the Court did not "deem it necessary to pursue the inquiry, contenting ourselves with the observation that it falls short of proving that the things complained of would be productive of physical discomfort to persons of ordinary sensibilities." The test, then, to be applied is one of reasonableness.

§ 282. **The Question of Proximity.** This test may be one of actual physical danger and discomfort as in the following

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19 1912, French vs. Assn. for Works of Mercy, 39 App. Dec. (D. C.) 406, Ann. Cas. 1913, E. 855.

case[1] where a hospital was conducted on the lot adjoining that on which complainant's residence was constructed in such close proximity that there was a distance of but thirty to thirty-five feet between the two buildings, and so maintained that the operations being conducted in the hospital, the removal of deceased patients, and practically all the transactions of the hospital were in full view from complainant's windows. The groans and complaints of the sick and dying were constantly heard, and the health of the complainant and members of her family was seriously impaired. This was a private nuisance, in the opinion of the Court.

The Court said that where the facts establish a nuisance, destroying the peace of the neighborhood, and injurious to health, equity will interfere by injunction without awaiting a determination of the question of the existence of the nuisance in an action at law.

§ 283. **Conduct or Management of Hospital.** "That the trustees of a hospital did not know that it was being conducted in a manner offensive to complainant, who resided next door, and that they would have minimized the evil so far as possible had they known of the condition of affairs, is no answer to a suit for an injunction to restrain the maintenance of the hospital. . . . From the evidence in this case it is clear and certain that the hospital conducted by appellant is a private nuisance. It not only destroys the peace, quiet, and comfort of those living in the residence of the appellee, but likewise seriously and injuriously affects their health, and occasions irreparable injury, within the meaning of the law. Under these circumstances equity will interfere by injunction, without waiting for a determination of the question of the existence of the nuisance in an action at law. The most that can be said for the evidence offered by appellant is that it indicates that the wrong is not of so serious a character, as complainant charges, and that it may be lessened somewhat by certain precautions which appellant is willing to use hereafter. The proposed measures would not result in the entire removal of the nuisance. It is said that a screen may be erected between the two properties, and the windows of the hospital may be kept closed and the curtains

[1] 1904, Deaconess Home vs. Bontjes, 207 Ill. 553, 69 N. E. 748.

drawn on the side next the property of appellee. It is manifest that in the summer time the windows must be opened and the curtains drawn aside in both buildings for ventilation, and it is equally apparent that the screen would not prevent the cries of the suffering, the moans of the dying, and other offensive noises being heard in the home of the appellee; nor would such an obstruction entirely prevent the transmission of the smell of iodoform, ether, and other offensive substances; nor would the annoyance resulting from the frequent visits of the hearse and the ambulance to the hospital be materially lessened by the proposed precautions. The work in which the appellant is engaged is philanthropy of the highest order, but the law will not permit it to be conducted in such a manner that it becomes an intolerable nuisance to those who are in no wise responsible for its location and operation. . . . From the evidence before us, this difficulty seems to come about from the fact that the grounds occupied by appellant are wholly inadequate in extent for the operation of the character there conducted.''[2] The judgment of the Appellate Court was affirmed.

Where one sinks an artesian well upon his land, and uses the water to bathe the patients in a sanitorium or hospital erected by him on said premises, he is not liable to injunction and damages for allowing the water to flow into a stream which is the natural water course of the basin in which the artesian well is situated, the owner being free from negligence or malice and using all due care in avoiding injury to his neighbor.[3]

The natural right to have the water of a stream descend in its pure state must yield to the equal right of those above. It is not, under all circumstances, an unreasonable or unlawful use of a stream to throw or discharge into it water or impure matter; and whether, in any given case, such use would be reasonable or not, is a question for the jury.[2]

Where a work is lawful in itself, and cannot be carried on elsewhere than where nature located it, or where public necessity requires it to be, then those liable to receive injury from it have a right only to demand that it shall be conducted

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[2] 1904, Same, 207 Ill. 553, 69 N. E. 748.

[3] 1893, Barnard vs. Sherley, 135 Ind. 567.

with all due care, so as to give as little annoyance as may be reasonably expected, and any injury that may result, notwithstanding such care in the management of the work, must be borne without compensation.[2]

§ 284. **Injunction Must be Secured Promptly.** A person may lose his remedy of injunction by remaining silent and inactive and allowing acts to be done and expenses to be incurred, and be compelled to assert his rights at law.[4]

§ 285. **Existence vs. Future Development of a Nuisance.** Another test is the apprehension or fear of conditions which may arise in the future. A court of equity will not interfere to prevent a nuisance occasioned by the carrying on of a legal trade such as manufacturing unless such nuisance be in actual existence and established by clear and satisfactory evidence; or unless the prosecution of the business from which the nuisance is apprehended, and the establishment of which the court is called upon to prevent, is of such a character as necessarily to produce the mischief which a court is called upon to prevent. "Generally, a court of equity will compel an individual who asks protection against an inconvenience or apprehended damage, arising from the prosecution of some legal enterprise, to establish his right to protection by the verdict of a jury before the court will interfere in his behalf."[5]

To the same effect it has been declared that though hospitals for insane persons may be so conducted in certain localities as to become nuisances, they are not nuisances per se.[6]

An injunction will not be granted to restrain an apprehended nuisance from certain use of property, unless it is inevitable or apparent that the proposed use will actually result in a nuisance. An insane hospital was located in a high class residential portion of the City of New York, suitable and valuable for residence purposes only. The relief asked was that the defendants be restrained from using the buildings for the purpose of maintaining a hospital for the insane and not from the further erection or alteration of the building.

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4 Same, 1893, 135 Ind. 567.

5 In the case of 1856, Wolcott vs. Melick, 11 N. J. Equity 204, 66 Am. Dec. 790.

6 1909, Heaton vs. Packer, 131 App. Div. 812, 116 N. Y. S. 46.

"We are of the opinion that the demurrer should have been sustained. Hospitals and insane asylums are necessities, and, while they may be conducted in certain localities as to become nuisances, they are not nuisances per se. . . . The plaintiffs concede that the defendants have a right to erect their buildings on their own land as they may choose, and they do not ask that their erection be restrained. By their allegations, however, they do set forth a large number of things which they apprehend will happen when the asylum shall be established and persons of unsound mind received for treatment. If all should actually happen which the plaintiffs now image will happen, possibly they might have good cause for complaint. The defendant's institution, however, may be so constructed and so managed that none of the evils which the plaintiffs apprehend will ever occur. While the establishment of a lunatic asylum in the plaintiff's neighborhood may not be a desirable thing, still the evils apprehended do not necessarily arise from its maintenance, and are not inherent to it, like those coming from a slaughter house, for example. . . . The rule sanctioned by the authorities and textbooks with respect to the restraining of an apprehended nuisance by temporary or permanent injunction is that an injunction will not be granted unless it is apparent or inevitable that the proposed use of the property will actually result in a nuisance."[7]

"Real not fancied dangers must be proved to secure an injunction. Where the maintenance in a city of an institution for the treatment of tuberculosis patients will jeopardize the health of the inhabitants of the city, a court of equity may grant such relief as will afford adequate protection to them from the threatened danger, but, where no real danger exists, the mere fact that uninformed people will assume a danger to exist cannot be made the basis of equitable relief."[8]

Equity will not grant a temporary injunction to restrain the maintenance in a city, of an institution for the treatment of persons afflicted with bone tuberculosis on the ground that the health of the residents of the city is jeopardized thereby,

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[7] 1909, Same, Heaton vs. Parker, 131 App. Div. 812, 116 N. Y. S. 46.

[8] 1910, Board of Health of Ventnor City vs. North America Home, 77 N. J. Eq. 464, 78 Atl. 677.

where physicians who have made a special study of the subject state that bone tuberculosis is neither contagious nor infectious.[9]

The Court said further that a law declaring that tuberculosis is an infectious and communicable disease, dangerous to the public health, does not render an institution for the treatment of persons afflicted with bone tuberculosis a nuisance per se, where it appears by the testimony of competent physicians that bone tuberculosis is neither contagious nor infectious.[10]

In view of these cases a portion of a widely quoted English case is given.

(1) "The principle which I think may be properly and safely extracted from the quia timet authorities," said the Court, "is that the plaintiff must show a strong case of probability that the apprehended mischief will, in fact, arise."

"But in the case where the health of the Queen's subjects in general is concerned, it may possibly be a question whether, if evidence shows that the maintenance of a smallpox hospital is, on the whole, balancing the good against the evil, more beneficial to the health of the public at large, or to that portion of the public that inhabits or frequents the neighborhood, than the leaving of the persons suffering from the disease scattered in their own homes, some weight might not be properly allowed to this circumstance." "Each case depends on its own facts; other cases may afford assistance to the experts, but they are not guides which the Court is bound to follow."

"The conclusion at which I have arrived is that the plaintiffs have failed on this motion to make out that there is a probability, much less that there is a high degree of probability, that the apprehended danger will in fact ensue. In parting with the case, I think it right to say that the Court ought to exercise great caution before it accepts any general proposition of fact which might tend to the closing of many a well-ordered smallpox hospital in the country."[11]

A Washington case gives a very liberal interpretation of

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9 1910, Same, 77 N. J. Eq. 464, 78 Atl. 677.

10-11 1893, Atty Gen. vs. Corporation of Manchester, 2 Ch. 87, p. 92.

the term nuisance.[12] One of the statutes had defined a nuisance as "an act or omission which either annoys, injures, or endangers the comfort, health, or safety of others." The maintenance in a residential district of a city of a sanitarium for the treatment of tuberculosis patients is a nuisance, "where the fear induced by the proximity of the sanitarium disturbs the 'comfortable enjoyment' of adjacent property, whether the fear is founded on scientific facts or not. 'Comfortable enjoyment' means mental quiet as well as physical comfort, and the word 'comfort' implies whatever is requisite to give security from want and furnish reasonable physical, mental, and spiritual enjoyment."[13]

"To constitute a nuisance, there must be more than a tendency to injure, and there must be something appreciable, tangible, actual, or subsisting, and, in determining whether an injury charged comes within these general terms, regard must be had to the notions of comfort and convenience entertained by persons generally of ordinary tastes and susceptibilities, and the nuisance and discomfort must affect the ordinary comfort of existence as understood by the people."[14]

§ 286. **Municipal Power to Declare a Nuisance.** Whether or not a private hospital or sanitarium which has been established and is not shown to be conducted in such a manner as to be a nuisance can be declared to be a nuisance by municipal ordinance is unsettled. The question arises as to the reasonableness of the ordinance and the infringement of constitutional rights.[15]

A grant of power to a municipality to declare what shall constitute a nuisance and to remove same, while it does not empower the municipality to declare anything a nuisance, which by reason of its location or use, or local conditions and surroundings, may or does become a serious obstruction to the use of the streets for public purposes, or is a nuisance within the common law or statutory definition, which is clearly not one, does empower it to declare anything a nuisance.[16]

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[12] 1910, Everett vs. Paschall, 61 Wash. 47, 111 Pac. 879.

[13] Rem. and Bal. Code, see 8309.

[14] 1910, Same, Everett vs. Paschall, 61 Wash. 47, 111 Pac. 879.

[15] 1893, Ex parte Whitewell, 98 Cal. 73, 32 Pac. 870.

[16] 1917, Duncan Electric and Ice Co. vs. City of Duncan (Okla.), 166 Pac. 1048.

The erection of a private hospital within the limits of a city may be forbidden by ordinance and thereby made unlawful. "Being, therefore, of opinion that the city council possessed the authority to prohibit the erection of private hospitals, it follows that an agreement made in direct violation of it cannot be enforced in a court of justice."[17]

"A municipal corporation which has erected and maintained a nuisance is liable in damages for injuries occasioned thereby. The preservation of public health by the establishment of hospitals and pesthouses for the isolation and treatment of contagious and infectious diseases is entirely within the police power. When the municipality, clothed with the power of the State, acts directly in the furtherance of these objects, the act is lawful."[18]

The code of the City of Atlanta provides that "it shall be unlawful for any person or persons, or corporations, to construct, erect, or build a house to be used as a private sanitarium, hospital, or boarding house, or other house of like character, wherein patients are kept, and medical or surgical treatment is given or performed," except in the manner therein provided. This provision has been held to be "within the police power delegated to the municipality," . . . whereby power is given to the mayor and general council "to control, regulate, and in its discretion prohibit the erection and maintenance of sanitariums, boarding houses, and other similar places in residence portions of the city."

A building which was alleged to be used as a "tourist and health resort" is prima facie included in that class described as a "house to be used as a private sanitarium, hospital, or boarding house, or other house of like character, wherein patients are kept and medical or surgical treatment is given," as employed in Section 729 of the Code of the City of Atlanta. The Court said that under the police power the State has undoubted constitutional power to protect the public health and morals from improper use of private property.[19]

17-18 1898, Baltimore vs. Fairfield Improvement Co., 87 Md. 352, 39 Atl. 1081.

19 1921, Blackman Health Resort vs. City of Atlanta, 151 Ga. 507, 107 S. E. 525.

"Among the objections urged against the petition was that the property upon which it was proposed to erect a health resort was only one hundred and fifteen steps from the entrance of Piedmont Park; that Piedmont Park would become an annex for crippled and deformed persons; that blood disease patients in petitioner's building would use and pollute the swimming pool in the park; that other hospitals would have to be allowed near the park; that children would be kept away from the park by parents on account of the nearness of invalids and convalescents in the building of petitioner; and that the health resort would commercialize the park. It would seem that public parks of a city are intended for the free use of sick persons, cripples, invalids, and convalescents, as well as persons enjoying perfect health, children, and their nurses. So far as we are aware, it has never been suggested that any one or more classes can be arbitrarily prohibited the use of a public park, directly or indirectly, or that their presence is unwelcome. . . .

"We think it is obvious that a 'tourist and health resort,' as described in the petition, not only is not per se harmful to public health and morals, but, when properly located and conducted, is legitimate, beneficial, and humanitarian. Notwithstanding the fact that the business is not per se injurious to public health and morals, it belongs . . . to that class included within the control of the police power of the State. . . . It would be an arbitrary and illegal exercise of power to decline the permit, unless it was shown that the building was injurious to health and morals. . . . For the reasons stated, and as we view the law and the facts alleged, the judgment dismissing the petition on general demurrer was erroneous."[20]

An ordinance which prohibited the maintenance anywhere in the city of any hospital for the treatment of contagious or infectious diseases, has been held to be wholly unreasonable, and so not justified as an exercise of the police power.[1]

In this case the Court said: "Enforcement by threat-

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[20] 1921, Blackman Health Resort vs. City of Atlanta, 151 Ga. 507, 107 S. E. 525. See also 1922, City of Atlanta vs. Blackman Health Resort, 153 Ga. 503, 113 S. E. 545.

[1] 1921, San Diego Tuberculosis Assn. vs. City of East San Diego, 186 Cal. 252, 200 Pac. 393.

ened repeated prosecutions of invalid city ordinance against maintenance of a hospital for tuberculosis will be enjoined, as they would cause substantial and irreparable injury, and there is no adequate remedy in ordinary course. The plaintiff is a corporation formed for benevolent purposes, and has for some years owned and operated a hospital for the treatment of those afflicted with tuberculosis. On July 3, 1919, the city trustees passed an ordinance, declaring every hospital for the treatment of persons afflicted with contagious or infectious diseases to be a nuisance, making the maintenance of any such hospital within the limits of the city a misdemeanor, making its maintenance a separate offense for each day it was maintained, and providing for punishment by fine or imprisonment for every offense. After the passage of the ordinance, the city authorities commenced a series of criminal prosecutions against the plaintiff, and threatened to arrest and prosecute its officers and employees and to keep on arresting and prosecuting them until the plaintiff should be compelled to close the hospital. Upon the grounds that the ordinance is invalid and that the plaintiff would be irreparably injured in its property right to maintain and conduct the hospital and had no other adequate means of relief, an injunction was asked enjoining the defendants from attempting to enforce the ordinance.''

§ 287. **Municipal Hospital as a Nuisance.** Where it does not appear that a municipality has been negligent or careless in the maintenance of such an establishment, or that by reason of some omission or commission it has become a nuisance to an extent greater than is inherent in the location and use of such institution, no relief therefrom can be had.[2]

The development of a single case of smallpox in fifteen years near a hospital for contagious diseases not traced to the hospital and arising probably from other causes, does not show mismanagement so as to sustain apprehension of future danger, authorizing a decree prohibiting further use of the hospital.[3]

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[2] 13 R. C. L. 954, Sec. 17; 1900, Frazer vs. Chicago, 186 Ill. 480, 57 N. E. 1055.

[3] A hospital for contagious diseases was located in a sparsely settled neighborhood upon land entirely surrounded by highways and on which there were no other buildings. With ordinary caution there was no probability of the

"A building used as a hospital for the treatment of diseases, contagious and infectious in their nature, is not per se a nuisance . . . and the erection and use of such a building will not be restrained simply because there is an apprehension that it may result in being a nuisance; but the Court must be satisfied that there is a well-grounded apprehension; . . . this Court will not pass upon the question of the right of a municipality to acquire and hold lands in an adjoining municipality or to erect or maintain a pesthouse thereon." Assuming lawful possession of the land: "It has conducted a hospital thereon for more than thirteen years past without creating or maintaining a nuisance thereby, and has used the buildings for the treatment of contagious diseases, and . . . has now, . . . nearly completed a modern hospital . . . so constructed as to reduce the danger of contagion to the lowest degree, and the only material foundation that the defendants should be enjoined is that it has not obtained the consent of Hamilton township to continue under safer plans the necessary humanitarian work it has carried on without legal protest since 1887. Under my view of the law such consent was not required in this case."[4]

When a pesthouse is created in good faith and with good judgment and as a necessary agent to combat contagion, its use will not be restrained. In the City of Manhattan large numbers of students were located in club and rooming houses throughout the city. The disease of smallpox appeared among such students, and increased to such an extent that the health officers were unable to control or diminish the contagion by the ordinary methods of quarantine. The officers of the city decided that a pesthouse was necessary to manage successfully the threatened epidemic. A stone building belonging to the city and formerly used for a floral hall when

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communication of contagious diseases from the hospital, unless by transmission through the air; and the buildings were at a greater distance from the highways than smallpox is transmissible in the open air. The Court held that this did not show a nuisance, or to justify apprehension that the buildings would become a nuisance, so as to authorize restraint of use by equity. 1906, State Board vs. Trenton, 63 Atl. 897.

[4] 1906, State ex rel. Board of Health, Hamilton Tp., vs. Inhabitants of City of Trenton (N. J.) Ch., 63 Atl. 897.

fairs were being held stood in the city park unoccupied. The building was prepared for temporary use as a pesthouse, and twelve patients were placed therein. No other building suitable for such purpose could be obtained in the city. A citizen whose residence was five hundred feet from this building, being afraid of contagion, caused the district judge to enjoin such officers from placing any more patients in the building, and to remove those already there within ten days. The city appealed to the Supreme Court.[5] "In this case the city and its officers were prohibited from performing an important public duty, . . . one which, by statute, they are expressly and clearly commanded to do. To the extent that the duty was performed it seems to have been done in good faith, for the best interests of all persons concerned, and under the circumstances shown, with commendable promptness and good judgment. The building selected belonged to the public and was the best that could be obtained in the city. The location was as free from objection as could have been secured. The claim that the use of the park for this purpose operated to divert it to an illegal use does not seem to be well taken. The park is public property, given by a dedication which does not limit its use. It might be used for any public purpose. A pesthouse is a public purpose for which it might be properly used temporarily in an emergency such as existed here." Under these circumstances, an injunction preventing the performance of this duty was improper and erroneous.[6]

A smallpox hospital was located on land hired therefor and adjoining the plaintiff's premises. Without any proceedings under the law or permission from the owner, the land was used by the hospital. A rope was put around the driveway, thereby bringing it within the hospital grounds, and the owner and his tenants were excluded from using it. The Court stated that the members of the Board of Health had no right to so take the plaintiff's land and that they were liable therefor, if it was done by them, or by persons in their presence and under their direction.[7]

The first two counts in the case were for trespass, the

[5-6] 1909, Manhattan vs. Hessen, 81 Kans. 153, 105 Pac. 44.

[7] 1906, Barry vs. Smith, 191 Mass. 78, 77 N. E. 1099.

third count alleged the ownership of certain lots on which were buildings containing a store and apartments let to tenants at will and one occupied by the plaintiff, and that on a certain date "the defendants negligently and carelessly and unlawfully established a smallpox hospital on the premises adjoining the plaintiff's lot aforesaid . . . and there negligently and carelessly and unlawfully maintained said smallpox hospital for a long period of time; that said hospital, by reason of its location and maintenance as aforesaid, was a serious nuisance, and a great damage to the plaintiff's property aforesaid, and said hospital was established and maintained by the defendants against the protest of the plaintiff; that in consequence of the careless and negligent and unlawful location and maintenance of said hospital, the plaintiff's said store and apartments were vacated by the tenants; . . . that since the establishment of said hospital, and by reason thereof, the rental value of the said apartments has also been greatly depreciated in value." The defendants answered with a general denial, saying they acted in their official capacity and disclaiming liability.[8]

Among other evidence shown on cross-examination, the defendants testified "that in locating the hospital where they did they paid no attention to the fact that it was located within one hundred rods of inhabited dwellings in the city of Malden; that they did not consider smallpox a dangerous disease, and that if said hospital was properly conducted it would not be a source of danger."[8]

The opinion of the Court states that "it is not true that a public officer is exempt from liability for all acts done in his official capacity . . . in the case at bar, in fixing the location of the hospital the defendants were exercising a discretion which the Legislature had required them to exercise as public officers. . . . Their decision on the question being quasi judicial or quasi legislative, was final. It was not competent to make them liable for a mistake or for negligence in the exercise of it; that is, in the location of the hospital. . . . Evidence that the defendants were negli-

[8] 1906, Same, 191 Mass. 78, 77 N. E. 1099.

gent and careless in locating the hospital was rightly excluded.''[9]

Whether the Judge was right in excluding evidence that ''the defendants had maintained the hospital in a negligent and careless manner, and that their carelessness in this respect made the hospital a nuisance to the plaintiff,'' depends upon whether this was an offer to prove that they were personally guilty of a misfeasance in the performance of a ministerial duty, like negligently setting off a blast in removing a rock from a highway, which it had been properly decided was to be removed. If the defendants were personally guilty of a misfeasance in such a matter, the hospital was, in consequence, a nuisance. . . . In connection with this offer of evidence it is to be borne in mind that there was evidence that, ''after the hospital had been in operation a couple of months, eight or nine cases of smallpox arose in six or seven houses in the immediate vicinity, including the plaintiff's house on Everett Street, and the evidence introduced by the plaintiff tended to show that smallpox was a dangerously contagious disease, and that the smallpox cases treated at the hospital caused the cases which arose in these houses in its neighborhood.''[10]

''If the defendants were personally negligent in the maintenance of the hospital and in consequence of that negligence the hospital became a nuisance to the plaintiff's adjoining houses and land, the defendants are liable within the rule of Moynihan vs. Todd, provided their negligence is a misfeasance, as distinguished from a nonfeasance.[11] If they are guilty of a nonfeasance only, no act lies against them. . . . It follows that the plaintiff does not make out a case against the board of health by showing that the hospital was a nuisance and that at the time it was under their control. The plaintiff must go one step further to charge the defendants with the nuisance, and prove that it was caused by acts of misfeasance on the part of the defendants, or, as in Elder vs. Bemis,[12] by an act or acts done by another in the personal presence which are thus the acts of the defend-

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9-10 1906, Same, 191 Mass. 78, 77 N. E. 1099.

11 1905, 188 Mass. 301, 74 N. E. 367.

12 1841, 2 Metc. (Mass.) 599.

ants. The plaintiff's offer 'to prove that the defendants had maintained a hospital in a negligent and careless manner, and that their carelessness in this respect made the hospital a nuisance to the plaintiff,' did not go far enough to charge the defendants with liability. It did not specify an act of misfeasance on the defendant's part which had caused the hospital to be a nuisance. . . ."

The requirements[13] that if a disease dangerous to public health breaks out in a "town" the board of health shall provide a hospital therefor, applies to cities as well as towns and that a person, whose dwelling is in a city in which is located a hospital for dangerous diseases, is not injured by its being established within one hundred rods of an inhabited dwelling in an adjoining town.[14]

As has been shown in an earlier chapter, the power to establish a hospital may be legally interpreted to include the power to maintain one. But where certain officers sought to establish a pesthouse so close to a public school as to menace the health of its attendants and where it was shown positively that other suitable places were available, an injunction has been granted.[15] "The authority . . . to proclaim and cause the enforcement of quarantine does not carry with it the arbitrary power in the officers and agents of the county to unnecessarily violate the rights of others. The existence of such authority does not imply that the officers and agents of the county may establish and maintain a nuisance either public or private, not necessary to the end to be accomplished. The establishment of a detention station and pesthouse, in which to place, respectively, persons who have been exposed to smallpox, and those afflicted with the disease, in such close proximity to a public schoolhouse that the germs of the disease may, and probably would, be disseminated among the children attending such school, would be the very worst character of nuisance, and would grossly violate the rights of those interested in the school. To uphold such an act would not strengthen the county's efforts to prevent the spread of the loathsome and dangerous disease, but it would

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[13] Rev. Laws, C. 75, Sec. 37.

[14] 1906, Barry vs. Smith, 191 Mass. 78, 77 N. E. 1099.

[15] 1900, Thompson vs. Kimbrough (Tex.), 57 S. W. 328.

support the very means of its dissemination, and thereby defeat the humane object which the law designs to be accomplished."[16]

§ 288. **Hospitals in Residential Sections.** An act prohibiting the establishing of hospitals in "built-up" sections of cities and towns has been upheld as a reasonable regulation. The term "built-up" in this act, which declares it unlawful thereafter to establish or maintain any additional hospital in the built-up portions of cities, is used in its ordinary and popular sense, and not as contradistinguished to rural and agricultural property, the sense in which it is used relative to taxation in cities of the second class.

New buildings on a new site, though constructed by a hospital already having buildings, are within the Act of April 20, 1899 (P. L. 66), declaring it unlawful thereafter to establish or maintain any "additional" hospital in built-up portions of cities.[17]

The Act . . . does not deprive one of his property without due process of law, or deny to him the equal protection of the law, in contravention of Const. U. S. Amend. 14, but is within the police power of the State, such prohibition having a real and substantial relation to protection of the public health, and the question whether the relation is or is not so close as to justify the prohibition being a matter for legislative determination.[18]

"Hospitals, pesthouses, and burial grounds are necessary and must exist somewhere. As the law stood before this act, they might be placed anywhere except where they become in fact a nuisance, or were specially prohibited. A pesthouse, containing persons with known contagious diseases; a hospital, drawing together in one place a large number of persons affected by disease, and which is thus likely to contain some person affected by contagious disease; and a burial ground . . . are all supposed, whether rightly or not, to be sources of contagion to those who come in contact with them, and the greater number of persons who come into such contact, and in turn come into contact with others, the greater

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16 1900, Same (Tex.), 57 S. W. 328.

17-18 1901, Com. vs. Charity Hospital, 198 Pa. St. 270, 47 Atl. 980.

the danger of the spread of disease. If this is true, there is obviously much greater danger to the general public health from such institutions in a populous city than in the country or in a village, and the danger will be in proportion to the number and density of the population, permanent and transient.[19]

"It is true that the act does prevent the defendant from using its property in a manner which before was lawful, but the defendant, equally with all other persons, natural and artificial, holds its property subject to valid police regulation, made and to be made, for the health and comfort of the people, and, if the act in question is such a regulation, the defendant has no cause of complaint."[20]

A law making it unlawful " 'hereafter to establish or maintain any additional hospital . . . in the built-up portions of cities; provided, however, nothing herein contained, shall not prohibit the rebuilding and enlargement of any hospital . . . now lawfully established and maintained,' does not prohibit the rebuilding and enlargement of an existing hospital; . . . in other words, all existing hospitals are to continue unaffected by the act, and are to be permitted to carry on their work as though this had not been passed. . . ."

The power to establish hospitals and asylums, does not confer the authority to create a nuisance if any other construction is possible, according to an English decision.[1] The Metropolitan Poor Act, 1867, authorized the formation of districts and district asylums for the care and cure of sick and infirm poor, creating corporations for that purpose. Authority is given to the Poor Law Board (now the Local Government Board) to issue directions to these corporations enabling them to purchase lands and erect buildings for the purposes of the Act, and making the rates of parishes and unions liable for the outlay thus incurred. But it does not, by direct and imperative provisions, order these things to be done; so that if, in doing them, a nuisance is created to the injury of the health or property of persons resident in the

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19 1901, Same, 198 Pa. St. 270, 47 Atl. 980.

20 1901, Commonwealth vs. Charity Hospital, 199 Pa. 119, 48 Atl. 906.

1 1881, Metropolitan Asylum Dist. Manager vs. Hill, 6 App. Cas. 193, 50 L. J. Q. B. 353.

neighborhood of the place where the land is purchased, or the buildings erected, it does not afford these acts a statutory protection. And, therefore, where such nuisance was found as a fact, it has been held that the District Board could not set up the statutes nor the orders of the Poor Law Board under it, as an answer to an action, or to prevent an injunction issuing to restrain the Board from continuing the nuisance.

"The appellants are, therefore, obliged, in order to succeed in this appeal, to prove that they have statutory authority to create a nuisance for the purpose of, and as incidental to, the maintenance of a smallpox hospital in this place."[2]

The method for relief from nuisances which is commonly adopted is that of injunction. After the existence in fact of the nuisance has been shown, equity has jurisdiction to abate, although the institution or body offending is public in character.

When buildings are being erected for a legal and proper object, such as a hospital for the insane, and there is no proof that they are causing, or likely to cause, any injury to the properties of the neighbors or any diminution to their value owing to causes for which the proprietors of the asylum would be liable, adjoining proprietors have no right to ask by injunction that the erection of the buildings be discontinued.[3] That is, interest must be shown.

An injunction may be granted against officers of an insane asylum for maintaining a nuisance. "So using property of the State," said the Court, "as to create a nuisance, whereby such private person is deprived of use and enjoyment of his land, would not be less a wrong and injury than forcibly ousting him of possession, and carelessly taking and appropriating it; for, while holding and controlling property of the State, its officers and agents can no more than a private person disregard the maxim, 'Sic utere tuo ut alienum non laedas.' It cannot be that in such case a person injured would be wholly without remedy merely because the wrongdoers

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2 1881, Same, 60 L. J. Q. B. 353, 6 App. Cas. 193.

3 Crawford vs. Protestant Hospital for Insane, 7 Montreal, Q. B. 57.

are agents or officers holding and controlling property of the State."[4]

Where the nuisance is threatened but not actually existent the holdings vary in different jurisdictions. It may be said that in general the injury must be imminent and irreparable and not doubtful or contingent.

Where the erection of an institution threatens to materially reduce the market value of adjacent real estate, an injunction will not be issued so long as there is no danger to health.

The erection and operation on its own land of a city hospital for patients afflicted with pulmonary tuberculosis would materially reduce the market value of adjacent real estate, but did not justify injunctive relief against the erection and operation of such hospital. Where no danger to health exists or could be reasonably apprehended from the operation of the hospital, a person cannot be denied the right to make lawful use of his property merely because such use injures the market value of his neighbor's property. "He will not be permitted to disturb the quiet enjoyment of his neighbor's habitation by interference with the atmosphere by unreasonable noises, odors, or gases; he will not be permitted to disturb physically his neighbor's property, as by backing water upon it or otherwise physically interfering with it, but the mere disturbance of market value is not regarded as an infringement of an existing right in the party damnified and cannot be made the basis of relief of this nature."[5]

A law created a special tribunal to pass upon the question of appropriate location of hospitals.[6] "After an adjudication by that statutory tribunal, based on a hearing and adequate notice, that a given location is a proper location, it would seem that this Court cannot properly review that question or base relief upon the claim that the location is not a proper location. There is, however, some doubt in my mind whether that statute for establishment of county tuberculosis

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[4] 1895, Herr vs. Central Lunatic Asylum, 97 Ky. 458, 30 S. W. 971.

[5] 1915, City of Northfield vs. Board of Chosen Freeholders, 85 N. J. Eq. 47, 95 Atl. 745.

[6] P. L. 129, Acts 1910; 1912, P. L. 340.

hospitals can be said to have been intended to include tuberculosis hospitals established by municipalities."[7]

Residents of a strictly residential district are entitled to restrain the erection and maintenance of a tuberculosis sanitorium in the vicinity, tuberculosis being by statute declared to be a communicable disease.[8]

The establishment of a hospital for the treatment of outdoor patients suffering from diseases of the throat, nose, ear, skin, etc., is a breach of a covenant in building lease against carrying on certain specified trades, or doing an act "which shall or may be or grow to the annoyance, nuisance, grievance, or damage of the lessor, his heirs or assigns, or the inhabitants of the neighboring or adjoining houses" . . . and will be restrained by injunction. ". . . the defendant in establishing and carrying on this hospital has brought into the neighborhood a possible danger from infection, sensibly larger than that which exists, as it always does exist, in the London streets. I think this an annoyance or grievance."[9]

In order to enforce such a covenant it is not necessary to show that actual damage or pecuniary loss has been sustained. "It is not sufficient . . . for the plaintiffs to show that a particular man objects to what is done, but we must be satisfied . . . that reasonable people, having regard for the ordinary use of a house for pleasurable enjoyment, would be annoyed or aggrieved by what is being done . . . it is not necessary, in order to show that there is reasonable ground for annoyance or grievance, to prove absolute danger or risk of infection." Anything which raises an objection in the minds of reasonable men may be an annoyance within the meaning of the covenant.[9]

A covenant in the lease of a house that the lessee should not use, exercise, or carry on upon the premises, any trade or business of any description whatsoever, has in England been held to include a charitable institution called a "Home for Working Girls," where the inmates were received upon payment of a small sum for board and lodging, but from

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7 1915, City of Northfield vs. Board of Chosen Freeholders, 85 N. J. Eq. 47, 95 Atl. 745.

8 1921, Brink vs. Shephard, 107 Neb. 250, 184 N. W. 404.

9 1888, Tod-Healty vs. Benham, 40 Ch. D. 80.

which no profit was derived. This was termed a business, and came within the restrictions of the covenant.[10]

Where an ordinance in effect declared that any private hospital for the treatment of inebriates, or those suffering from insanity, or other mental diseases, was a public nuisance, and should be abated as such, unless its location and maintenance were consented to in writing by the owners of private property within two hundred feet of the hospital building, it was a proper police regulation, since the presence of a private insane asylum, with its barred windows, and irresponsible inmates, would annoy, injure, and endanger the comfort, safety, and repose of any person of average sensibilities, if located within two hundred feet of his residence.[11]

The ordinance in question applies to different kinds of hospitals and sanitariums, and prescribes different requirements with which those desiring to establish and maintain such institutions, must comply. The provisions of the ordinance are severable, both as to the character of the institution and the requirements to be met or complied with. Some of the requirements may be valid and others invalid; or they may be valid as to one kind of institution and invalid as to another.[12] "In other words, it is a matter of common knowledge that the presence of such an institution in a residential portion of a city would practically destroy the value of all property within its immediate vicinity for residence purposes. If so, it was proper and competent for the municipal authorities to require the assent of the injured parties to its location and maintenance.[13] There are many unpleasant and annoying things that must be borne by those living in a state of organized society, in order that others may enjoy their equal rights under the law, but the preservation of the public health and safety is one of the chief objects of local government, and every citizen holds his property subject to a reasonable exercise of the police power of the State."[14]

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[10] 1883, Rolls vs. Miller, 25 Ch. D. 206.

[11] 1910, Spears vs. City of Seattle, 59 Wash. 363, 109 Pac. 1067.

[12] 1910, Same, 59 Wash. 363, 109 Pac. 1067. See also, 1896, Seattle vs. Pearson, 15 Wash. 575, 46 Pac. 1053, etc., 1070.

[13] See also, 1909, Spokane vs. Camp, 50 Wash. 554, 97 Pac. 770.

[14] 1910, Shephard vs. City of Seattle, 59 Wash. 363, 109 Pac. 1067.

Owners in a district restricted to dwellings, who stand by and allow a dwelling to be altered at different times, at a large expenditure of money, through a number of years, out of all semblance to a dwelling, and used as a hospital, will not be granted an injunction to restrain its maintenance as such, although an injunction will be granted to restrain additional buildings.[15]

A home for nurses of a near-by hospital is not a "residence" within a deed restricting the building of other residences.[16]

As indicated in Moller vs. Presbyterian Hospital,[17] "when a hospital association purchases property without notice of any verbal agreement of its grantor restricting its use, and bases its right to use it on the record title, which contains no restriction interfering with its proposed use, except that the premises are not to be used for any trade or business which may be noxious or offensive to neighboring inhabitants. it will not be restrained from erecting a building thereon for use as a residence for nurses, without evidence justifying a conclusion that a building so used will be any more obnoxious to neighboring inhabitants than a building used as a residence by any other class of persons."

"The Court is asked to enjoin, not the carrying on of a business that has been demonstrated to be obnoxious, but the erection of a building which the defendant intends to erect upon its property. If the use to which this building should be put after it is erected should become obnoxious to the neighborhood within the provisions of this covenant, it would then be time for the plaintiff to ask the Court to enjoin such use; but certainly nothing appears to justify the Court in restraining the defendant from erecting a building which in terms is not prohibited by the covenant when the use, so far as appears, will not of itself constitute a violation of the covenant."[17]

The use of a building, in a portion of the city entirely given up to residences, as a hospital for the care of sick infants, including any who may develop, after admission,

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15-16 1917, Hartwig vs. Grace Hospital, 198 Mich. 725, 165 N. W. 827.

17 1901, 65 App. Div. 134, 72 N. Y. S. 483.

contagious disease, is a nuisance, which will be restrained by an injunction in a suit brought by an owner of a contiguous dwelling.[18]

A building cannot be used as a hospital for the care of sick infants, including any who may develop, after admission, contagious disease, where there is a restrictive covenant in the deed that "no tenement house, livery, or other stable, slaughter house, butcher or smith shop . . . or any other building, trade, or business which may be dangerous, injurious, or offensive to the neighboring inhabitants, shall be built, allowed, or carried on the above . . . granted premises."[18]

"In my opinion the hospital is not a nuisance prima facie. While not within that class, there are general features inseparable from its maintenance proper for consideration upon the contention of its being shown a nuisance from the way of management. In these are included the noise of patients, their advent, removal, and death, with its consequences. From the evidence appears the reasonable probability of contagious disease, provided for by a wise provision, although limited to cases to develop after reception. While this may diminish the number, it does not remove the important factor. The locality is shown wholly devoted to private residences, until this most laudable undertaking selected the house for its accomplishment."[19]

There can be no definite or fixed standard to determine control in every case in any locality, the question being one of reasonableness or unreasonableness in the use of the property which is largely dependent upon the locality and its surroundings. "The hospital, even if not dangerous, is injurious and offensive, in the same way as a tenement house,

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18-19 1888, Gilford vs. Babies' Hospital of the City of New York, 1 N. Y. S. 448, 21 Abb. N. C. 159.

See also, 1923, Prest vs. Ross, 245 Mass. 342, 139 N. E. 792. "A hospital is generally regarded as of great usefulness, if not a necessity, in modern urban communities. It may be said that such an institution, properly equipped and efficiently conducted, is in the interest of the public welfare. It is common knowledge that, if the service hospitals are organized to render is to be prompt and effective, they must be conveniently accessible to patients, surgeons, and physicians, and where the use of the property for this purpose is not shown to be unreasonable or in excess of conditions reasonably necessary, injunctive relief will not be decreed nor damages awarded."

livery or stable, butcher shop or brewery. The rule calls for similitude in the nature of the injury or offense, not the particular manner or means of its conveyances. The tenement may bring crowd, turbulence, and contagion; so may the hospital; the others may give offense to the senses, so may this business as well."[19]

A covenant which required the grantee to build, within a specified period, a residence to be used only as a private residence for one family, was not merely a limitation upon the construction, but was a restrictive covenant running with the land and limiting the enjoyment of premises and prohibiting the use of building other than as a one-family private residence. The use of such a building as a maternity hospital constituted a breach of the covenant restricting its use to residential purposes for one family.[20]

"We cannot doubt," continued the Court, "that the attempted use is a breach of restriction. The lease provides that the building shall be 'occupied as a sanitorium and not otherwise.' The evidence makes it clear that it is used as a maternity hospital. By no stretch of language can we say that this is equivalent to use as a private residence for one family."

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[20] 1919, Booth vs. Knipe, 225 N. Y. 390, 122 N. E. 202, Reversing order Sup., 155 N. Y. S. 577.

See also, 1922, Ayars vs. Wyoming Valley Homeopathic Hospital, 118 Atl. 426; 1923, Emrich vs. Marcucilli, 244 S. W. 865; 1923, Prest vs. Ross, 245 Mass. 342, 139 N. E. 792. 1923, Thompson vs. Evangelical Hospital Assn., 196 N. W. 117.

CHAPTER IX

THE LICENSING OF HOSPITALS

§ 300. **Definition of License.** A license is in its general sense defined as a right or permission granted by a competent authority either to do that which is unlawful at common law or is made unlawful by statute or ordinance which includes the authorizing or requiring of a license. A privilege has been defined as "the exercise of an occupation or business which requires a license from some proper authority, designated by some general law, and not free to all, or any, without such license." It follows that an occupation or privilege license is the permission granted to an individual by a competent authority to engage in and carry on the particular business or calling to which it refers.[1]

§ 301. **Power to License.** The power to license is in reality the power to sell a privilege which may be maintained when a "special benefit is conferred at the expense of the general public, or the business imposes a special burden on the public, or where the business is injurious to or involves a danger to the public."[2]

The power to license may be exercised for regulation, revenue,[3] or prohibition, but not for the purpose of creating a monopoly and in the absence of an inhibition, expressed or implied, in the State Constitution, the Legislature may, either in the exercise of the police power or for purposes of revenue lay license taxes on occupations or privileges within the limits of the State, and in the absence of such inhibition this power may be delegated to municipal or quasi municipal

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1 25 Cyc. 598.

2 1887, Marmet vs. State, 45 Ohio State 63, 12 N. E. 463.

3 Thus in Florida hospitals, sanitariums, and other places for the treatment of diseases or habits, for profit, are to pay a license tax of $25. This is not to apply to hospitals, sanitariums or other places of like character conducted by charitable associations or societies. (Rev. Gen. Stat. 1920, Sec. 905.)

corporations within their corporate limits. This grant to a municipality may be either for the purpose of regulation or for taxation and may include, as in matters affecting public health, discretionary power as to who may carry on the business and where it may be transacted. In the absence of the express conferment of exclusive power on the city, the delegated power may be exercised concurrently by the State or county.[4]

§ 302. **Conditions for Issuing License.** While the power to tax does not include the power to license, the power to regulate or prohibit does include the power to license as a means to that end. The extent and duration of the license must be determined and a municipality may refuse a license even where statutory requirements are fulfilled. This does not include the right to prohibit a useful and legitimate occupation.

The State or municipality may annex any condition it deems proper but in the absence of this requirement anyone with the legal capacity to contract is entitled, as a matter of right, to the license on the payment of the prescribed fee.

The officer or body which has the power to issue the license is usually specifically mentioned in the license, and the right to grant licenses carries with it the right to exercise a reasonable but not an arbitrary discretion. But having granted the license, reasonable regulation of this business can still be made. A license is not retroactive; it takes effect from the date of its actual delivery and not from the date of its grant by ordinance. A license is no protection for a different business than that licensed, and does not confer the right to violate criminal laws, and does not create a monopoly.

The conditions under which a license may be issued may be prescribed, or the issuing thereof may be left to the discretion of the licensing power. As Freund has shown, the restrictions may be based on objective conditions, e. g.,

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[4] Thus in Kansas, cities of the first class may levy and collect a license tax upon and may "regulate any and all callings, trades, professions, and occupations, conducted, pursued, and carried on or operated within the limits of such city . . . " including private hospitals (G. S. 1915, Ch. 18, Art. 9, Sec. 1221). The city council of cities of the second class has exclusive authority to levy and collect a license tax on private hospitals in Kansas. (Same, Ch. 19, Art. 3, Sec. 1723.)

restrictions as to locality.[5] The conditions under which the act or thing is permissible may be stated, that is, no license may be required, or the license may be a certificate, the issue of which is a merely ministerial act. Where these conditions are not specified, the designated authority under statute or ordinance must determine the issuance or non-issuance of the license. In a number of cases it has been held that absolute and unregulated discretion is unconstitutional. A general law of March 14, 1867, relating to the incorporation of cities, authorized the common councils of cities incorporated under such law to "enforce ordinances . . . to erect and establish market-houses, market-places, engine-houses, houses of refuge, pesthouses, and hospitals." The Court held that there was nothing in this clause or any other part of the statute, authorizing the common councils of cities to enact ordinances to regulate the establishment of private hospitals erected within the city limits; the word "hospitals" in such clause meaning only public hospitals.[5]

"The theory upon which these decisions proceed," says Freund, "is either that a power of regulation delegated by the Legislature must be exercised by the body in which it is vested and may not be further delegated by it, or that an ordinance which leaves everything to the circumstances of the individual case is in reality no regulation and unreasonable by virtue of its looseness, or that the uncontrolled discretion gives opportunity for arbitrary discrimination and thus violates the principle of the equal protection of the laws. Where the statute vests the discretion directly in the administrative authority, there may also be an objection on the ground that the Legislature has abdicated an authority which under the Constitution it must exercise itself."[6]

Decisions to the contrary have been sustained in various states—Connecticut, California, Massachusetts, etc.—partly upon the free exercise of proprietary control; the power to prohibit includes the powers to remit upon any terms deemed expedient. In some places the consent to the location of noxious establishments, such as livery stables, saloons, etc.,

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[5] Freund, Police Power, Sec. 645 et seq. See also 1880, Bessonies vs. Indianapolis, 71 Ind. 189.

[6] Freund, Police Power, Sec. 643.

is dependent upon the vote of the people in the locality concerned.

§ 303. **Inspection and Regulation.** The inspection and regulation of hospitals is very closely associated with the licensing of hospitals. The power of inspection, examination or investigation is akin to the power to regulate. The power of taxation, it has been held, does not include the power to license but the power to regulate and prohibit does include the licensing power. "The power of inspection is exercised as an incident to regulations for the prevention of disease, accident, or fraud. . . . The power of inspection is distinguishable from the power to search; the latter is exercised to look for property which is concealed, the former to look at property which is exposed to public view if offered for sale, and in nearly all cases accessible without violation of privacy. Hence, inspection does not require affidavit, probable cause, or judicial warrant. The right to inspect may be reserved as a condition in granting a license."[7]

In the matter of licensing, inspection, and regulation of hospitals there are numerous legal and administrative questions involved which have for the most part been determined in the Courts in connection with other interests such as health regulations, liquor licenses, and the maintenance of saloons. The question of the licensing or the regulation of a hospital may in addition to the guarantees of humane and adequate treatment involve the problem of location. This is a particularly vital problem in the matter of insane hospitals and pesthouses and other institutions where the maintenance of a nuisance may be charged. This difficulty may be met either by state law or local ordinance or by building covenants or contracts. Although such a hospital is not a nuisance per se, an injunction may be secured from the courts to restrain an apprehended nuisance, if it is inevitable or apparent that the proposed use will actually result in a nuisance.[8]

The following sections bring together the laws governing the licensing of hospitals. The term licensing, however, connotes not merely the giving of the permit but also its revoca-

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7 Freund, Police Power, Sec. 47. See also, Chapin: Municipal Sanitation, p. 112.

8 1909, Heaton vs. Packer, 131 App. Div. 812, 116 N. Y. S. 46.

tion. Conditions may be attached which permit the inspection of premises or the submission of information and reports. In addition to the general laws such as those governing the licensing of private insane and maternity hospitals, particular cities may be given the right to license or regulate institutions for the sick, to inspect the same, and to regulate their conduct. Some of the laws such as the State Fire Marshal's Law and the food and drug regulations, cover all "public buildings" or use phrases equivalent thereto. This would include public hospitals, and private hospitals which are dedicated by their use to the public. But is a private hospital, privately owned and operated, subject to sanitary, fire, food, and other inspections? As was pointed out before, the wording and interpretation of the individual statute is the determinant. There are included in the following compilation the laws which specifically authorize the licensing, inspection, or regulation of hospitals as found in the various states.

§ 304. **Alabama.** The State Child Welfare Commission is given the right of visitation and inspection of all state, county, municipal, and other agencies and institutions, public or private (including maternity hospitals), excluding insane hospitals, and giving to the Commission also the right to license such agencies annually except those under state ownership and control.[9]

The State Board of Health has power to inspect all hospitals and asylums. Whenever unsanitary conditions are found, steps may be taken to abate such conditions.[10]

An inspector of jails, almshouses, cotton mills, or factories who is to be "a practicing physician in good standing, learned in the science of sanitation and hygiene," is to be appointed by the Governor and holds office for four years. It is his duty to visit every county jail and almshouse in the State at least twice a year or oftener, and "to aid in securing the just, humane, and economic management of all such institutions." He is to inspect the sanitary conditions and arrangements and the cost of management, and report his findings to the Governor. He has power to obtain and require information. In event his orders are not carried out, the

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[9] Alabama S. L. 1923, No. 275, and No. 60.

[10] G. A. 1919, No. 654, p. 909, amending Code, Sec. 702.

prisoners may be transferred, at the expense of the county, to another county until the condition is improved.[11]

The State Child Welfare Department is to have charge of the annual licensing, regulation, and supervision of maternity hospitals and may prescribe registration, records, and reports.[12] The officers and agents of this department, the state and local (county) boards of health, may visit and inspect every licensed hospital at least once in three months.[13] No such hospital is to engage in the business of child placing and information is to be given out only on inquiry of a court of justice, by order of the Court, for a coroner's inquest, etc.[12]

§ 306. **Arkansas.** All public and private hospitals are to be inspected by the sheriff of the county in which the institution is situated, by the grand jury thereof, or by any person or persons appointed by the Circuit Judge of the district upon petition of twenty citizens, or by the volition of the Judge. The institution is to be open at all times to the inspection of such persons and they are to visit it unannounced and "interrogate each inmate out of the hearing of any officials or servitors of said institutions separately to ascertain whether or not the inmates are the subject of voluntary confinement." The results of these investigations are to be filed with the county clerk for the inspection of the grand jury.[14]

§ 307. **California.** The Board of State Charities and Corrections prescribes the forms of record for use of county hospitals, etc., and the neglect or failure to use these records is a misdemeanor.[15]

No person, association, or corporation may maintain or conduct a maternity hospital or lying-in asylum without first obtaining a written license or permit from the State Board of Charities. This license once issued is to continue until revoked for cause after hearing. The Board may inspect and

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11 Code 1907, Sec. 72, 12; 7222.

12 S. L. 1923, p. 731, No. 60.

13 County Board of Health, S. L. 1911, p. 573.

14 Digest 1921, Crawford & Moses, Sec. 5894-5899; 1915, Act. 150, p. 505. The power to regulate has in a number of cases been held to include the power to license. The license fee "is not a tax upon the occupation, but a compensation for issuing the license, for keeping the record, and for municipal supervision over the business." 1911, Carpenter vs. Little Rock, 101 Ark. 245.

15 Gen. Laws 1915 (Deering), Act. 575.

report on conditions prevailing in the institutions. The license is to be obtained in writing from the county board of health or the county health officers. The licenses are to specify the name and residence of a person undertaking the care of such persons and is revocable for cause by the county board of health or county health officer if in his opinion "such hospital, asylum, institution, home, boarding house, or other place, is being managed, conducted, or maintained without proper regard for the health, comfort, or morality of the inmates thereof, or without due regard for proper sanitation or hygiene." Every person licensed is to keep a register of entrants and the officers or representatives of the county board may enter and inspect the premises at all reasonable times.[16]

Boards of supervisors of the counties and the legislative bodies of incorporated cities and towns in the exercise of their police power and for the purpose of regulation are authorized to license "all and every kind of business not prohibited by law."[17] The business of maintaining a private asylum for the treatment of mild forms of insanity, inebriety, and other nervous diseases, is a lawful one and cannot be prohibited either directly or indirectly.

An ordinance of the board of supervisors of San Mateo County of March 16, 1892, regulating the business of keeping asylums for the care of persons afflicted with insanity, inebriety, or other nervous diseases, provides (Sec. 3) that the board shall not grant a license to any persons to conduct such business unless the walls of the asylum designated are rendered fireproof by being constructed of brick and iron, or stone and iron, and the grounds accessible to patients are surrounded by a brick wall at least eighteen inches thick and twelve feet high, and the premises are distant more than four hundred feet from any dwelling house or schoolhouse. Section 4 provides that no license issued by the board shall authorize male and female patients to be cared for in the same building. The Court, after considering the matter, held

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[16] Gen. Laws 1915 (Deering), 1523; Stats. 1903, p. 317.

[17] Kerr's Biennial Supp. Anno. 1917, Sec. 3366; 1900-1, p. 635, amended 1915, p. 723; 1917, p. 279.

that Sections 3 and 4 are unconstitutional and void, being an arbitrary exercise of the police power.[18]

"The State may, of course, make proper laws for the care, government, and safe-keeping of the unfortunate insane within its limits. . . . In the discharge of this duty the State has provided public asylums, to which persons who are so far disordered in mind as to be dangerous to remain at large may, upon satisfactory proof of such condition of mind, be committed . . ., but it has made no provision at all for those of unsound mind who are not regarded as dangerous to themselves or the property or persons of others. . . . It will thus be seen that it was not the intention of the Legislature, in providing public asylums for the insane, to deprive the kindred and friends of even dangerous lunatics of the privilege of caring for them elsewhere, upon showing their ability and willingness to do so, while, as to those not regarded as dangerous to themselves or others, the law does not contemplate that they shall be confined in such asylums at all. But unfortunate persons belonging to this latter class are not to be denied the right to receive the patient attention, and often healing treatment of a comfortable private asylum or hospital, if they or their kindred or friends are able and willing to incur the expense of such care and treatment. The business, therefore, of conducting a private asylum, in which proper care can be given to such persons by a member or members of the medical profession having experience and special skill, in the treatment of such cases, is a necessary and humane one; and the right to maintain such an asylum or hospital, and to follow and practice this particular branch of the medical profession, cannot be prohibited or burdened with unreasonable and oppressive conditions."[19]

All county officers, including the superintendents of hospitals, county farms, or almshouses, are to make on or before the first day of July in each year, and file with the county clerk an inventory under oath, showing in detail all county property in their possession or in their charge.[20]

§ 308. **Colorado.** It is unlawful for any person, persons,

18-19 1893, Ex parte Whitewell, 98 Cal. 73, 32 Pac. 870.

20 1915, Deering, Sec. 4321.

partnership, association, company, or corporation to open, conduct, or maintain any hospital, dispensary, or other institution for the treatment or care of the sick or injured or engage in or conduct the business of receiving or caring for girls or women approaching or during childbirth, without first having obtained a license therefor from the State Board of Health. Applications are made as prescribed by the Board which shall license applicants furnishing satisfactory evidence of their fitness to conduct and maintain such institution. This license may be refused or revoked when the requirements of the Act or the Board are not fulfilled. Applications for hearing of complaint about revocation, protest, and hearing are provided.[1]

Hospitals, dispensaries, or other institutions for the treatment or care of sick or wounded shall make a quarterly report on the first day of January, April, July, and October to the State Board of Health of the number and names of people in charge, or employed, and if physicians, the number of their licenses to practice medicine . . . with such other information as may be required.[1]

The Board has power to investigate and inspect such institutions at any time.[1]

The State Board of Charities and Corrections has the power to receive and make inquiry into complaints regarding the conduct and management of private eleemosynary associations, societies, and corporations operating and existing within the State, to require reports from and issue licenses thereto, to revoke such licenses for due cause, and visit and investigate such institutions.[2]

All institutions of a charitable nature, private eleemosynary societies, associations, and corporations are to obtain a license, without fee, renewable annually, from the State Board of Charities and Corrections. An annual report is to be filed and the license may be revoked after public hearing. By definition this applies to hospitals which deal "in a general or special way with persons incapable in whole or in part of self-support. . . ."[3] This is not to apply to institutions

[1] R. S. 1912, Ch. 78, p. 1507, Sec. 3431-3436; L. 1909, p. 411, Sec. 1.

[2] Mills. Anno. Stats. 1912, Sec. 609; L. 1911, p. 204, Sec. 2, amending. L. 1901, p. 87, Sec. 1.

[3] Same, Sec. 614.

licensed by the State Board of Health, that is, hospitals, dispensaries, or other institutions for the treatment or care of the sick or injured, maternity hospitals, etc.

§ 309. **Connecticut.** Maternity hospitals are not to be operated until licensed by the mayor or board of health of the city or the health officer of the town, wherein such maternity hospital or lying-in place is situated. Records are to be kept and are open to inspection. Any authorized person may enter and inspect the hospital and "all its appurtenances, for the purpose of detecting improper treatment of any child, or any improper management or conduct in said hospital or lying-in place or its appurtenances. Every person so authorized may take and remove any article which he thinks presents evidence of any crime being committed therein, and deliver the same to the coroner, to be disposed of according to law."[4]

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4 Gen. Stats. Rev. 1918, Sec. 3023.

Sec. 4670, provided that "no person shall keep a maternity hospital without a license therefor from the officials of the city or town chargeable with the care of the public health," and provides, further, for the conduct and management of such hospitals, for inspection by the health officers of the city or town where the hospital is located, to detect improper treatment of any child therein, or any other improper management or conduct, and for the removal of any articles found therein believed to present evidence of crime committed therein. The Court held that the section providing that "no person shall keep a maternity hospital," etc., which imposes upon a board of health an implied duty to license such a hospital, must be construed to grant a discretionary power to issue such license, and the right to determine the character and moral fitness of the applicant, so that a petition for mandamus to compel the issue of such a license was insufficient, where it did not allege that the applicant was a suitable person to be licensed, or that the defendants, in refusing a license, did not exercise a reasonable discretion.

"The plaintiff claims he is entitled to a license to keep a maternity hospital under Section 4670 of the General Statutes. He made an application for such a license to the defendants, which was refused. He claims that the statute gives the board of health no discretion in the matter, but that they are bound to give a license to every applicant, regardless of character or qualifications. The statute in terms imposes no duty upon the board of health to license anyone to conduct such a hospital or place. Any duty which is thereby imposed upon the board is an implied one. Whether such a duty is implied and, if so, the nature, extent, and limitations of the duty are to be determined from the Act itself, its language, and the purpose intended to be accomplished by it. The provisions of the act . . . show that the purpose of the act was to regulate the business of keeping such places as are therein described. Such business, when properly conducted, is legitimate and of public benefit; but that it affords opportunity for the commission and successful concealment of

No institution for the treatment or detention of insane persons is to be conducted or maintained, except under license granted by the Governor. The application is to show the facilities, etc., and is revocable after reasonable opportunity to be heard.[5]

The State Board of Charities may inspect all almshouses, asylums, hospitals, and all institutions for the care or support of the dependent or criminal classes in order to ascertain whether their inmates are properly treated. An appeal may be taken from the orders of the Board to the Governor. Orders concerning any institution are to be signed by a majority of the Board and are to be presented in writing to the persons in charge of the institution. The state hospitals for the insane are to be visited once in three months by at least one member of each sex of the State Board of Charities. No previous notice of such visit is to be given the persons in charge of the institution visited, and at every such visit

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crime is apparent. The act contemplates this and provides for the visitation and inspection of such places, when licensed, for the purpose of detecting the improper treatment of any child, and the discovery and removal of any article which the visiting authority thinks presents evidence of any crime having been committed therein. It is not to be presumed that the Legislature, contemplating, as it evidently did, the danger and possibility of such places being used for the perpetration and concealment of crime, intended, in impliedly imposing upon boards of health the duty of 'duly licensing' persons to carry on the business, that they shall license any and every person who shall make application for such a license. It must have been intended that the board should have some discretion in granting such license, and that the character and moral fitness of the applicant should be considered before granting a license. It cannot be supposed that it was intended that a license should be granted to a person already under conviction for the violation of this very statute, or some other offense involving moral turpitude."

"It is to be implied from the fact that all persons are forbidden to pursue this occupation, unless they have procured a license from the board of health, and have the other provisions of the act referred to, that it is the duty of that board to issue licenses to suitable persons to conduct business in suitable places; that it does not lie within the absolute discretion of the board to grant or withhold a license as it shall see fit, but that it shall exercise a reasonable discretion in the performance of such duty.

"There is no allegation in the application or in the alternative writ that the applicant is a suitable person to be licensed, or that defendants in refusing him a license did not exercise a reasonable discretion. Without the allegation and proof of these facts, the plaintiff was not entitled to the writ prayed for, and the motion to quash was properly sustained." 1911, Adleman vs. Board of Health, 84 Conn. 691, 81 Atl. 1055.

[5] G. S. 1918, Sec. 1695; Rev. 902, Sec. 2722.

the opportunity is to be given each inmate for private conversation with some member of the Board.[6]

The Commissioner of Health is to make at least once in each year an inspection of all public hospitals and asylums and submit a report of his investigations to the Public Health Council with such recommendations as he may deem proper.[7]

The State Department of Health may require reports and information at such times and of such facts, relating to the safety of life and the promotion of health, from all public dispensaries, hospitals, and asylums.[8]

No asylum, home, or institution for the defective, deformed, or incurable persons shall be established or maintained within the limits of any town without the consent of the town, unless under express legislative authority.[9]

§ 310. **Delaware.** The State Board of Health may collect and require information concerning births, deaths, sanitary conditions, and reports "from all public dispensaries, asylums . . . and from the managers, principals, and officers thereof, and from all other public institutions."

The Board is also an advisory board to the authorities of the State in all matters pertaining to public hygiene. It has the power and authority to make special inspections of hospitals, asylums, almshouses, and other public institutions.[10]

By act of the General Assembly the mayor and council of Wilmington are given the authority by ordinance, to issue license "and to require and receive a license fee from the owner or owners of any business, avocation, profession, pursuit, or calling, operated, carried on, or engaged in, within the corporate limits of the city of Wilmington, including business occupations . . . and things not now exempted by law from tax in this State."[11]

§ 311. **Florida.** Hospitals, sanatoriums, "and other places for the treatment of diseases or habits, for profit, are to pay a license tax of $25.00. This provision, however, does

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[6] G. S. Rev. 1918, Sec. 1888; Rev. 1902, Sec. 2858; 1905, Ch. 66.

[7] G. S. Rev. 1918, Sec. 2364; Rev. 1902, Sec. 2505; 1917, Ch. 391.

[8] Same, Sec. 2371; same, Sec. 2506; 1917, Ch. 391.

[9] Same, Sec. 1868; Rev. 1902, Sec. 2853.

[10] Code 1915, Secs. 738, 739; 19 Del. Laws, Ch. 642, Secs. 3, 4; 22 Del. Laws, Ch. 327, Sec. 3; Ch. 98, Sec. 1; 28 Del. Laws, C. 49, Sec. 739, Sec. 4, repealed and reenacted.

[11] Laws 1920, C. 29, p. 75.

not apply to hospitals, sanatoriums, or other places of like character, conducted by charitable associations or societies."[12]

In addition to the state license, a county license tax of fifty per cent of the state license tax is levied and imposed on any business, profession, or occupation mentioned. The incorporated cities and towns may impose "such further license taxes of the same kind upon the same subjects as they may deem proper," not to exceed fifty per cent of the state license tax, "except as otherwise authorized by law." The licenses are issued for not more than one year and expire on the first day of October each year. All state licenses are to be paid to the State Collector or to the Comptroller or the State Treasurer as provided, and the county license taxes to the county tax collector.[13]

The Governor, on recommendation of the board of county commissioners, is to appoint a commission of six in each county, three men and three women, to inspect all charitable institutions within the county, including, among others, hospitals, sanatoriums, and asylums. They are to visit each institution once each year or oftener, to ascertain the treatment of inmates and the general conditions of said institutions. The commission is to serve without salary but is allowed actual traveling expenses.[14]

§ 312. **Georgia.** The Board of Public Welfare is authorized to "visit, inspect, and examine once a year or oftener, state, county, municipal, and private institutions and organizations which are of an eleemosynary, charitable, correctional, or reformatory character or which are for the care, custody, or training of the orphaned, defective, dependent, delinquent, or criminal classes; it shall also inspect and report upon the workings and results of chartered or private institutions or associations or organizations engaged in the care and protection of homeless, dependent, defective, and delinquent children or adults." It is to make reports on the conditions of the institutions, the care of their inmates, the efficiency of their administration, "and such other matters pertaining to it as it may deem proper." The duties of the Board are

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12 Gen. Stats. 1920, Sec. 905; Acts 1913, Ch. 6421, Sec. 27.

13 Rev. Gen. Stats. 1920, Sec. 807.

14 Rev. Gen. Stats. 1920, Secs. 691-693; Acts 1917, Ch. 7378.

"strictly visitorial and advisory," but it is to bring prosecutions for the fraudulent solicitation or misappropriation of charitable funds and for gross neglect or mistreatment of wards or inmates. All plans for new almshouses and buildings for charity, supported by public funds or public collections, shall, before the adoption of the same by the State, county, city, or voluntary authorities, be submitted to the Board. The Board is to make such suggestions and recommendations as it may deem proper.[15]

§ 313. **Idaho.** The Constitution authorizes the Legislature to impose a license tax both upon natural persons and upon corporations other than municipal, doing business in the State.[16]

It is unlawful to keep or establish a maternity or lying-in hospital without a license from the Department of Public Welfare. The Commissioner of Public Welfare may issue a license on written application filed and accompanied with the endorsement of six or more persons of good reputation in the community or of the county in which it is to be located, certifying the respectability of the applicant and that the place will be used only for legitimate, moral purposes, whether a charitable institution or one conducted for profit. If, after inquiry, the place is found to be suitable and properly arranged, on the payment of the fee, the license will be issued for two years, revocable by the Commissioner for violation of rules and regulations, and is subject to inspection.[17]

The State Tuberculosis Commission is to visit each district tuberculosis hospital semi-annually for the purpose of inspecting all books, papers, and accounts and of informing themselves as to the welfare of the patients. District officers are to inspect the same at least every three months.[18]

It is the duty of the county boards of health to provide for the examination by the secretary into the sanitary condition of all county buildings and "other public institutions" at least one a year before the first of May, and to file a report with the department of public welfare.[19]

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15 Laws 1919, No. 186, p. 222.
16 Constitution VII, 2.
17 L. 1921, C. 57.
18 Comp. Stats. 1919, Sec. 1236; 1919, C. 58, Sec. 7-d, p. 176.
19 Comp. Stats. 1919, Sec. 1658; 1909, p. 153; amended 1913, C. 140, Sec. 1; 1917, C. 111, p. 189.

§ 314. **Illinois.** All institutions other than state institutions which give treatment and care to persons suffering from mental and nervous diseases are to provide the State Public Welfare Department with detailed information from time to time, regarding their equipment and medical and nursing service. A written certified statement giving the admissions, deaths, and discharges during the previous three months, is to be given the Board. The Board is to license those institutions, which after careful inspection, are found to be suitably equipped and conducted, and it may in its discretion revoke the license. No person is to be committed to, received, or kept against her will, contrary to law, in any such institution, not having a valid license from the Board.[20]

Maternity or lying-in hospitals, whether public or private, must apply for and obtain from the State Public Welfare Department licenses to conduct the same. The application is to be endorsed by six or more persons of good moral character, who are regular taxpayers of the county, and if, in the opinion of the Board, the hospital is to be carried on for legitimate purposes, and the persons connected therewith are proper and suitable persons to conduct such a hospital, then a license shall be issued. If at any time the law or regulations of the Board are violated, the license may be revoked. The Board of Administration through its agents, is at all times to have free access to any hospital licensed under the Act and to all its records.[1]

The city council in cities and the president and the board of trustees in villages are given the power to establish and regulate hospitals, medical dispensaries, and sanatoriums and to direct the location thereof.[2]

§ 315. **Indiana.** Maternity hospitals are to be operated only under written license of the Board of State Charities. The act does not apply to state institutions. The Board has power to grant such license for the term of one year to provide general rules and regulations. The license is to state the name, the premises in or at which the business is to be carried on, the number of women to be cared for, and shall

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[20] 1919 (Hurd), Rev. Stats., C. 23, p. 227; (J. and A.) 1913, Sec. 961.

[1] 1919 (Hurd), Rev. Stats., C. 23, Secs. 317-321.

[2] 1919 (Hurd), Rev. Stats., p. 330, Ch. 24, Sec. 62, Art. 5, Subd. 77.

be posted in a conspicuous place. The Board of State Charities and the board of health of the respective cities and counties shall annually or oftener, if found desirable, visit and inspect, or designate a person to visit and inspect, the premises and investigate the manner of conducting the business licensed. Each visit is to be reported to the Board of State Charities. The license may be revoked when the law, or the rules and regulations are disregarded or where, in the opinion of the Board, the institution is maintained without due regard to the health, comfort, or morality of the inmates or the common rules of hygiene. Notice of revocation is to be given.[3]

The State Board of Health has power to make sanitary inspections and surveys in all parts of the State and of all public buildings and institutions, "to regulate and prescribe the character and location of plumbing, drainage, water supply, the disposal of sewerage, lighting, heating, and ventilation, and of all sanitary features of all public buildings and institutions."[4]

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[3] Acts 1909, p. 369; 1914, Anno. Stats. Burns, Sec. 3678 A-O.

[4] Acts 1909, p. 342; Burns, 1914, Sec. 7594.

A case arose over the interpretation of the clause for the incorporation of cities which authorizes the common council of incorporated cities "to enforce ordinances . . . to erect and establish market-houses, market-places, engine-houses, houses of refuge, pest-houses, and hospitals."

The Court held that there is nothing in this clause, nor in any other part of such statute, authorizing common councils of cities to enact ordinances to license and regulate the establishment of private hospitals erected within the city limits; the word "hospitals" in such clause, meaning only **public** hospitals.

The general power conferred on common councils "to make other by-laws and ordinances not inconsistent with the laws of this State and necessary to carry out the objects of the corporation," authorizes the enactment of such by-laws and ordinances only as are necessary to the complete exercise of the corporate powers expressly or impliedly granted to cities thereby.

On petition for rehearing it was said that: "Without any provision as to the location or management of hospitals, the ordinance attempts to make it unlawful for any one to establish or conduct one without a license or permit from the common council and board of aldermen; and the granting or refusal of the license or permit is not governed by any prescribed rules, but rests, in such case, in the uncontrolled discretion of the common council and board of aldermen . . . It is sufficient to say that if the ordinance is valid, the common council and board of aldermen have it in their power to grant a license and refuse another under the same circumstances. No law could be valid, which by its terms, would authorize the passage of such an ordinance." 1880, Bessonies vs. Indianapolis, 71 Ind. 190.

§ 316. **Iowa.** Maternity or lying-in hospitals or institutions are to be licensed by the State Board of Health. The application for the license is to state the names of persons applying, the location, a statement by two regular physicians to the effect that said persons are of good character and reputation, that the premises have been examined and found to be suitable and properly furnished, etc. The State Board of Health when satisfied and on the payment of the required fee, may issue a license for the period of one year, unless sooner revoked. No fee is to be required of any religious or charitable institution conducting such an institution. The State or local board of health may inspect the premises at any time at least once in six months and report such inspection to the city, town, or township clerk of the city, town, or township in which such premises are maintained. The permit is revokable after reasonable notice by the State Board of Health, "and a conviction under the succeeding section of this chapter shall operate to terminate and revoke said permit."[5]

The Commissioner of Public Welfare may issue the license on written application filed and accompanied with the endorsement of six or more persons of good reputation in the community, citizens of the county in which it is to be located, on certifying the respectability of the applicant and that the place will be used only for legitimate or moral purposes, whether a charitable institution or one conducted for profit.

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5 Code 1919, Sec. 1356 et seq., S. 1913, Sec. 2575-a 20, etc.

Under the authority to license, the Supreme Court has held that taxes cannot be imposed. The power to tax does not confer the authority to license, the objects to be attained in the exercise of these powers not being the same. "Under the authority to regulate, duties may be imposed and restrictions enforced upon the keepers of taverns . . . under the authority to license, police control is exercised over the persons licensed; they are required to make application to certain officers for a license, and they are thus made amenable to police authority, becoming known and identified. It may be that certain restrictions, conditions, and limitations may be imposed upon them in the prosecution of their business. Upon being licensed, . . . the first cannot be exercised under authority to do the last." 1876, Burlington vs. Bumgardner, 42 Iowa 673.

However the same Court has held that in the exercise of the power granted to cities "to suppress and restrain . . . billiard tables" (Code, Sec. 451), it is competent for municipal governments to license the same, under proper conditions. 1876, Burlington vs. Lawrence, 42 Iowa 681.

If after inquiry the place is found to be suitable, and properly arranged, on the payment of the fee, the license will be issued for two years, revokable by the Commissioner for violation of rules and regulations enacted.

A record is to be kept by the proprietor of the full name and address of each person admitted, the date of admission, the date of birth and removal of every child, and the name of attending physician, if any. The hospital is to be subject to inspection and the proprietor is to report births within three days to the Commissioner.

§ 317. **Kansas.** No person or physician is to establish or keep a hospital, asylum, institution, or house or retreat for the care, custody, or treatment of the insane or persons of unsound mind, for compensation or hire, without first obtaining a license therefor from the State Board of Charities and Corrections. This does not apply to hospitals or institutions established by the State or county. The application for the license is to be accompanied by a plan of the premises to be occupied, statement of number of patients to be received, male or female, etc. The State Board is authorized to grant this license after an examination of the buildings and plans, and the license is to be filed in the office of the county clerk of the county in which such hospital, asylum, or corporation is located. The Board may revoke the license for reasons deemed satisfactory to the Board, but the revocation must be in writing.[6]

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[6] Gen. Stats. 1915, Sec. 9629; L. 1901, Ch. 353, Sec. 81.

In the absence of any inhibition expressed or implied, in the Constitution it has been held that the Legislature has power, either directly to levy and collect license taxes on any business or occupation, or to delegate like authority to a municipal corporation. 1883, City of Newton vs. Atkinson, 31 Kansas 151.

Certain persons were charged with keeping and maintaining for compensation and hire an insane asylum or retreat upon the grounds of Christ's Hospital in Topeka without having a license so to do and in violation of the statute. The Court below issued a perpetual injunction restraining the "Keeping, maintaining or operating or using said cottages as an asylum or retreat for persons who are insane, mentally deranged, or of unsound mind . . . ." It was claimed that the Court had no authority to enjoin the defendants absolutely from receiving and treating the insane persons of unsound mind and those mentally deranged "but only from conducting the place in such a way as to disturb the peace and quiet of the community."

"The Legislature has declared that institutions for the care and treatment of the insane for compensation should not be established without a license from the proper officers of the State having the

Cities of the first class are authorized through their mayor and council to levy and collect a license tax upon and regulate any and all private hospitals carried on or operated within the limits of such city.[7] The mayor and council are to authorize the proper officers of the city to grant and issue licenses, and to direct the manner of issuing and regulating the same. All license taxes are to be regulated by ordinance and no license is to be issued for a longer time than one year.[8] The same power and limitations are given to cities of the second class.[9]

Maternity homes or hospitals are to be licensed by the State Board of Health, excluding state institutions and regular hospitals other than maternity hospitals. After inspection

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care and oversight of the unfortunate, which license should be issued only upon a showing of suitable plans and facilities which the Board may deem adequate for such an important undertaking. This statute, we may presume, was designed for the protection of those in need of humane care, and also to protect the public from the danger, consternation, and disturbance incident to inadequate facilities or inefficient administration in private unlicensed institutions. The cries of the mentally unbalanced and deranged and danger from their irresponsible acts are calculated to and do cause apprehension and distress, although no actual physical harm can be done. Hence the wisdom of the statute in seeking to secure proper places and proper facilities for the proper treatment of these unfortunate people and the importance of obedience to its requirements. . . .

"The statute in question having been continuously violated "thereby causing fear, consternation, and disturbances of the peace, the injunction was rightfully issued to restrain the defendants from receiving into such unlicensed institution, and from keeping, maintaining, caring for, or treating therein, persons of the class or classes named in the statute. In the allowance of injunctions in such a case courts are not restricted to the prohibition of disturbances of the peace; they may prohibit the violation of law or of duty resulting in disturbances, or evils of the nature stated in the findings in this case. A court cannot prescribe how an institution shall be operated which the law declares shall not be operated at all. Without the license there is no right to maintain the retreat, however wise its management . . . with proper management in the future there might be no actual danger from the continuance of this retreat for the treatment of the mentally deranged, but the apprehension and alarm of the community will continue and it is believed that the public has the right to restrain violations of a statute which, if obeyed, would bring all such institutions under the effective control of the State, and prevent alarms and disturbances in the community.

"Nothing in this decision will prevent the future operation of this institution under a license, should one be obtained, and it should be operated so as to avoid the disturbances against which the injunction was granted, or other violation of law." 1911, State vs. Lindsay, 85 Kansas 192, 116 Pac. 209.

7 Gen. Stats. 1915, Sec. 1221; L. 1903, Ch. 122, Sec. 134.

8 Same, Sec. 1222; L. 1903, Ch. 122, Sec. 135.

9 Same, Secs. 1723, 1724; L. 1872, Ch. 100, Sec. 47, as amended L. 1881, Ch. 40, Sec. 3; L. 1872, Ch. 100, Sec. 48.

and reasonable notice in writing the Board may revoke the license. Notice is to be given of the revocation. Records are to be kept on such forms as are furnished by the State Board of Health. The institution must be properly ventilated and heated and proper sanitation required. Fire extinguishers and fire escapes are to be provided. The Board of Health may make further sanitary regulations and the Division of Child Hygiene of the Board of Health is required to inspect each institution at least once every six months. Authority is given to view the premises and see the patients.[10]

§ 318. **Kentucky.** The State Board of Health, through the Bureau of Tuberculosis, is to encourage the "adequate provision for consumptives by the establishment of sanatoria, hospitals, and dispensaries." The head of this bureau at least once in each calendar year is to visit all sanatoria, both public and private, and report and file with their records a statement of the condition and efficiency of each sanatorium.[11]

Any person who desires to establish or keep open a private maternity or lying-in hospital is to present to the mayor or judge of the county court a statement signed by two reputable physicians showing that the premises are suitable, etc. The mayor or the judge may inspect, or cause to be inspected, the premises, and if satisfied may issue a permit. These institutions are subject to such medical inspection as the city council in the city or a county court may direct, and to the inspection of the grand jury.[12]

Municipal corporations of the first class may, through their general council and by ordinance, provide for licensing any business, trade, calling, or occupation . . . whether or not the same has heretofore been enumerated in any statute, and may fix in each case a license fee.[13]

§ 319. **Louisiana.** The State Board of Charities, with its officers in the city of New Orleans, is to visit and inspect all state, parish, or municipal institutions, which are of a charitable or eleemosynary character. The duties of the

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10 Laws 1919, Ch. 210, p. 284.

11 Acts 1918, Ch. 65, p. 332, amending Sec. 2061 of the Code.

12 Statutes 1915(Carroll), Sec. 2090.

13 Statutes 1918, Sec. 3011, July 1, 1893, C. 244, Sec. 255, p. 1265, as amended.

Board are strictly visitorial; it is without administrative or executive powers.[14]

§ 320. **Maine.** A town may establish one or more hospitals for the reception of persons having the smallpox or other diseases dangerous to the public health; or its local board of health may license any building therein as a hospital, which shall be under the control of said board. When a hospital is so established or licensed it is subject to all the regulations made by the local board of health.[15]

No person, firm, or association is to solicit funds for charitable or benevolent purposes, outside of the municipality in which it resides or does business, without having a written license therefor from the State Board of Charities and Corrections. This does not apply to organizations already under the supervision of the Board, July 3, 1915. No license is to be granted for a term exceeding one year and must state the name of the licensee, residence or place of business, and the purpose for which funds are to be solicited. The Board is to grant the license whenever it is shown to their satisfaction that the person or organization requesting the license is "reputable and responsible and has suitable facilities for applying the funds to the purpose for which they were solicited. . . ." The Board is to advise as to the organization of institutions, and all plans and specifications for new hospitals, almshouses, or other similar institutions and buildings for charitable or corrective purposes, and which shall be in any way under the inspection of the Board, shall be submitted to the Board for criticisms and suggestions before the same are erected.[16]

By an amendment to a previous act, maternity hospitals are under the supervision of the State Department of Health instead of under the Board of Charities and Corrections. Any license issued by the Board of Charities and Corrections is to remain in force until its expiration or revocation for cause.[17]

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[14] Marr's, Anno. Rev. Stats. 1915, Sec. 791, p. 247; 1904, Act 176, Sec. 1, p. 361.

[15] Rev. Stats. 1916, Sec. 95, Ch. 19, p. 447; R. S. C. 18, Sec. 75; 1915, C. 338, Secs. 14, 15.

[16] Rev. Stats. 1916, C. 147, Sec. 5, p. 1634; 1915, C. 9, Secs. 1, 2; 1913, C. 196, Secs. 6 and 7.

[17] Laws 1921, C. 86, p. 97, amending R. S., C. 64, Sec. 58.

§ 321. **Maryland.** The Secretary of the Board of State Aid and Charities is to inform himself fully as to the condition and conduct of the institutions receiving financial assistance from or having contracts with the State. The Board has power to visit and inspect thoroughly the management, buildings, and equipment of any institution receiving financial assistance from the State. These visits are to be made at reasonably convenient hours and with reasonable regard to the established discipline, regulation, and customs of the institution.[18]

The Lunacy Commission is vested with plenary power of supervision of the insane, and is given full power to make an investigation and examination of all institutions, public or private, whether incorporated or controlled by individuals, which are authorized, by law, to receive and care for insane persons and to inquire into the nature and methods of detention, treatment, government, and management of all persons therein confined or detained. Inspection is to be made at least once in six months and at such time as the visitor may choose. Cognizance is to be taken of cleanliness and sanitary conditions, the number of patients in seclusion or restraint, the dieting and treatment of the patients and any other matters the Commission may consider necessary. The Commission is to report its findings annually to the Governor.[19]

No person is to keep an asylum, retreat, or private place or home for the care or custody of the insane or treatment of such cases or persons of unsound mind for compensation or hire without first obtaining a license therefor from the State Lunacy Commission. This does not apply "to any state or incorporated institution or almshouse in any of the counties, except when a county almshouse shall receive insane persons from other counties for pay." Application is to be accompanied by plans and such details of information as the Commission may require.[20]

§ 322. **Massachusetts.** The selectmen of a town may issue a license, subject to revocation by them, to a person to

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[18] L. 1916, Ch. 705, p. 1651, adding Sec. 4-A to Art. 88-A, Secs. 1, 3, 5, 6 of Code.

[19] Laws 1910, Ch. 715, Secs. 19, 23.

[20] Pub. Gen. Laws 1904, Art. 59, p. 1480, Sec. 27; 1888, Art. 59, Sec. 27; 1886, Ch. 487, Sec. 28.

establish or keep therein for two years a lying-in hospital, hospital ward, or other place for the reception, care, and treatment of women in labor, if the board of health shall first certify to the selectmen that, in its judgment, the applicant for such license is a suitable person, and that from its inspection and examination of such, the same is suitable for the business. The hospital, hospital ward, or other place is subject to visitation and inspection at any time by the selectmen, the board of health, and the chief of police, and if during the year it receives more than six patients, by the State Board of Health.[1] This provision has, however, been amended.[2] The State Board of Charity may issue a license, subject to revocation by it, to a person, body, or association of persons, incorporated or unincorporated, whether for a charitable purpose or otherwise, whom it deems suitable and responsible to establish or keep for two years within a city or town of this Commonwealth, a lying-in hospital, hospital ward, or other place for the reception, care and treatment of women in labor, if the local board of health shall first certify to the State Board of Charity that, from its inspection and examination of such hospital, hospital ward or other place aforesaid, the same is suitable for said purpose.[3]

The State Board of Charity is to have supervision of all such hospitals, hospital wards, or other places and is to make the necessary rules for their regulation and may designate its agents to visit and inspect the same. These places, as provided before, are subject to visitation and inspection at any time by the head of the police department, or his authorized agent, or the board of health of a city, or by the chief of police, selectmen, or board of health of a town, and if, during the year, an institution receives more than six patients, by the State Board of Health.[4]

The Governor and Council may license any suitable person to establish and keep an asylum or private house for the reception and treatment of insane persons, and may at any time revoke such license. This asylum or private house is subject to visitation by the Governor and Council, or any

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[1] Rev. Laws 1902, C. 75, Sec. 62, p. 667; 1876, Ch. 157, Sec. 1, 2, etc.

[2] Revised 1910, C. 569; 1911, C. 264.

[3] Acts 1911, C. 264.

[4] Acts 1910, C. 569.

committee thereof, and by the judge of probate of the county in which it is situated.[5] It is by statute provided that no association "now or hereafter formed for the care of the insane, and no private corporation now or hereafter incorporated for the care of the insane, shall acquire land in a city or town to be exempt from taxation without the consent of the city council or the corresponding body in a city with the approval of the mayor, or without the consent of the legal voters of the town in which such land is situated."[6] It is further stated that restraint "shall not be imposed on any insane patient in any public or private hospital, sanatorium or institution, unless applied in the presence of the superintendent or physician. Records of restraint are to be kept, etc."[7]

A dispensary is defined by statute as "any place or establishment, not conducted for profit, where medical or surgical advice or treatment, medicine or medical apparatus, is furnished to persons non-resident therein; or any place or establishment, whether conducted for charitable purposes or for profit, advertised, announced, conducted or maintained under the name "dispensary" or "clinic," or other designation of like import. These are not to be maintained without a license in writing from the State Department of Health. The application for such license is to be prescribed by the Department of Health and is to be uniform for all schools of medicine. Attached statement is to obtain information required by the department and verified by oath. Licenses are to expire at the end of each calendar year and are renewable annually on application. No license is transferable except with the approval of the Department. The fee is $5.00 except to incorporated charitable organizations which conduct dispensaries without charge and which report as required by law to the State Board of Charity. The public health council is to make rules and regulations and may revise and change same. The Commissioner of Health or his authorized agent has authority to visit and inspect any dispensary at any time. After thirty days' notice and opportunity to be

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5 Rev. Laws 1902, C. 87, Sec. 111, p. 772; 1864, p. 288, Sec. 8.

6 Acts 1911, Ch. 400.

7 Acts 1911, Ch. 589.

heard, if in its judgment the department determines that the public interest so demands, the license may be revoked.[8]

§ 323. **Michigan.** The Board of Corrections and Charities (now known as the State Welfare Commission)[9] is authorized to grant licenses to conduct, establish, maintain, or carry on any maternity or lying-in hospital under such rules and regulations as the Board may prescribe. The application is to be endorsed by six or more persons of good moral character who are resident taxpayers of the county where such institution is to be located, and who shall certify the respectability of the applicant, and that "such hospital shall be used only for legitimate, moral, and charitable purposes." If after due inquiry the Board is satisfied that the applicant is a proper person and the premises are suitably and properly arranged for such purpose, the board shall grant a license for the purpose or purposes above mentioned. The license is in force for a period of one year and is revokable by the Board on violation of provisions of the act or regulations of the Board. The hospital is subject to inspection and examination at any reasonable time by any member of the Board, and its secretary, any member of the local board of health of the city, village, or township in which such hospital is located or by the principal agent of any duly incorporated society for the prevention of cruelty to children. The records are to be accessible, etc.[10]

The director of the State Welfare Department and the State Hospital Commission, or any member or agent appointed by either of them, have supervisory and visitorial powers over every private hospital, institution, or other home in which persons mentally diseased are treated or kept in custody under contract or hire or under the commitment of any court in the State. They have the right to enter any such place at reasonable hours for the purpose of inspection of the patients or equipment therein. A written report of such inspection is to be made for the records of the State Welfare Department.[11]

The State Board of Pharmacy has been given the power

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[8] Acts 1918, C. 131.

[9] P. A. 1921, No. 163, p. 336, Sec. 3.

[10] Comp. Laws 1915, Ch. 208, Sec. 10881; Act 263, 1913, p. 490.

[11] P. A. 1921, No. 163, Sec. 11, p. 340.

to inspect during business hours all pharmacies, dispensaries, stores, or other places in which drugs, medicines, and poisons are compounded, dispensed, or retailed.[12]

All asylums and hospitals are to be constructed according to the provisions of the law regarding health, safety, ventilation, etc. The plans and specifications are to be approved by the State Fire Marshal as to safety, fire protection and prevention, and by the State Board of Health as to sanitation, light, and ventilation.[13]

The Board of Commissioners for the general supervision of penal, pauper, and reformatory institutions are to inspect annually every county infirmary, county jail, city and village jail, police station or lock-up, and every private incorporated institution for the care and maintenance of the aged and defective. Unsanitary conditions are to be reported to the county, city, or village clerk, giving notice and findings. If within a year the conditions have not been remedied, the institution may be closed.[14]

Charitable organizations or institutions soliciting public aid are to be licensed by the State Welfare Commission. All such organizations are to file a statement with the Board stating the name, location, purposes for which money solicited is to be expended, and the terms under which solicitors are employed. The Board may issue a license without expense, for one year, renewable from time to time and subject to revocation by the Board for cause shown after reasonable notice and opportunity to be heard. The act does not apply to prohibit any local organization, institution, or association from publicly soliciting funds or donations within the county in which such institution, organization, or association is located.[15]

§ 324. **Minnesota.** Maternity hospitals are to be licensed by the State Board of Control for one year if conducted "by a reputable and responsible person" and for the public good.[16]

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12 P. A. 1921, No. 120, p. 260.
13 P. A. 1921, No. 401, p. 740.
14 P. A. 1921, No. 393, p. 270.
15 P. A. 1917, No. 28, p. 53.
16 A hospital was convicted in the municipal court of St. Paul of maintaining a maternity hospital without first having obtained a license. Two questions were raised on appeal to the Supreme Court. 1. Whether chapter 50, Laws of Ex. Sess. 1919, is unconstitutional because it embraces more than one subject, and (2) whether it is unconstitutional within Art. 1, Sec. 7 of the Constitution guaranteeing

The Board is to prescribe general regulations and rules of conduct and no patient is to be received for care without a license. No license is to be issued unless the premises are in fit sanitary condition. The license is to state the name of the licensee, premises on which business may be carried on, and the number of women who may be properly treated at any one time. A record of the license is to be kept by the Board of Control, and after due notice and hearing the license may be revoked. Appeal may be taken to courts as in civil actions. The Board of Control is to prescribe forms and records. Officers of the State Board of Control or the State Board of Health, and the local Board of Health of the city, village, or town in which the hospital is located may inspect such hospital at any time and examine every part thereof.

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due process. In the opinion of the Court: "The statute is entitled 'An Act defining and regulating maternity hospitals'." The Constitution provides that . . . "No law shall embrace more than one subject which shall be expressed in its title."

The statute defines a maternity hospital, for the purposes of the act, and provides for its licensing by the State Board of Control. Conducting such a hospital without a license is a misdemeanor. Regulations are prescribed for its conduct, and for the health and well-being of the inmates and the public welfare. "We are unable to see that the act contains anything which is not germane to the title. Within the constitutional sense it embraces but one subject."

"The statute is a police regulation. Its purpose is to secure the health and comfort and well-being of the inmates of the hospital and to safeguard the interests of the public. That in doing so it somewhat restricts the activities of those conducting maternity hospitals, if the restriction be no greater than is reasonable, is not important. Others than the owners are interested . . . Many callings having to do with public health or welfare may be regulated . . . Whether the licensing of maternity hospitals should be regulated, as it is by the statute drawn in question, was a matter of legislative discretion; and the statute invades no constitutional right of the defendant under Art. 1, Sec. 7, of the Constitution or other constitutional right.

"We do not agree with the counsel for the defendant that the statute grants to the Board of Control arbitrary power to withhold a license, regardless of conditions, and that it is therefore void . . . The statute is paternalistic. So are other statutes in the exercise of the police power. It contemplates an investigation and consideration of conditions and a supervision and regulation by the Board; but an arbitrary refusal of a license is not intended.

"The only questions decided are that the title of the act is sufficient within the constitutional requirement, and that in the exercise of the police power the Legislature may require maternity hospitals to be licensed." 1921, State vs. Women's and Children's Hospital Assn. (Minn.), 184 N. W. 1022.

Reasonable information and facility for viewing the premises and seeing the patients therein are to be given.[17]

Each insane hospital and asylum is to be visited by a member or the Secretary of the Board of Control once each month.[18] The state detention hospitals are also to be visited and inspected.[19]

§ 326. **Missouri.** The State Board of Charities and Corrections is "to examine into the condition and management" of "all hospitals, infirmaries, dispensaries, and public and private retreats or asylums which derive their support wholly or in part from the State, or from any county or municipality within the State." Information is to be furnished by officers of the institution. The Board may prescribe forms and may investigate the institution. The Board is to advise with the county courts regarding improvement of the physical property of almshouses or county hospitals, and plans and specifications for the erection of new buildings or for any improvement of old ones to cost $500 or more shall be furnished the Board for their criticism and advice before any contract or agreement for the construction of the same shall be valid. The Board is to formulate general and reasonable rules for the care of the insane and defective classes, the sick and other classes in county institutions and for sanitary arrangements of such institutions. The institutions are to conform to these rules. An annual report is to be made to the Board, and the Board is to specify a system of records.[20]

The State Board of Charities and Corrections is to issue written licenses to persons or organizations conducting maternity hospitals or maternity boarding houses. No licenses are to be granted for a term longer than one year. The Board is to investigate the condition of maternity hospitals, to inspect their books and records, premises, etc., and to revoke the licenses of those failing to obey the rules and regulations of the Board. It may visit any of the women or children in the institution and order their removal if necessary. The Board is to determine the records, forms, etc., to be used by

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17 S. L. Spec. Sess. 1919, Ch. 50, p. 76, also G. S. 1913, Secs. 4985, 4988, 4992; L. 1911, Ch. 199, Sec. 1.

18 G. S. 1913, Sec. 4021.

19 Same, Sec. 4083.

20 Rev. Stats. 1919, Sec. 12176, R. S. 1909, Sec. 1316; Laws 1913, p. 130.

the institutions, the information to be for the Board of Charities and Corrections alone. The State Board may cancel the license for failure to comply with orders, rules, or regulations of the State Board of Charities and Corrections. Notice of cancellation is to be given.[1] It is unlawful for a maternity hospital to be conducted or maintained without a written license from the State Board of Charities and Corrections, and the Act is not applicable to institutions maintained or operated by the State, city, or county. A maternity hospital is defined as a place in which within any period of six months more than one woman is received for treatment during pregnancy or delivery except a woman related by blood or marriage.[2]

Cities of the first class are authorized to establish and maintain hospitals, eleemosynary institutions, and a sanitary system, and to make regulations for the government thereof; to erect, purchase, or rent hospitals, insane asylums, etc., and to license, tax, and regulate venereal hospitals, other private hospitals, and similar institutions.[3]

Cities of the second class are given the same powers to purchase, lease, and maintain insane asylums and hospitals;[4] to license, tax, and regulate venereal hospitals "and all occupations, professions, trades, pursuits, corporations, and other institutions and establishments . . . not heretofore enumerated, of whatsoever name or character, like or unlike, and to fix the license tax to be paid thereon or therefor";[5] to license, regulate, tax, or suppress private and venereal hospitals.[6]

Cities of the third class may erect, establish, and regulate hospitals, and provide for the government and support of the same.[7]

Cities of the fourth class, through their board of aldermen, are given power to erect, establish, and regulate hospitals and to make regulations to secure the general health of the city.[8] The mayor and board of aldermen have power to license, tax, and regulate private venereal hospitals.[9]

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1 L. 1921, p. 470.
2 Rev. Stats. 1919, Sec. 7627.
3 Same, Sec. 7674, Subds. 8, 9, 17.
4 Same, Sec. 7696, Subd. 16.
5 Same, Subd. 18.
6 Same, Subd. 19.
7 Same, Sec. 8294.
8 Rev. Stats. 1919, Sec. 8474.
9 Same, 8497.

The city council of any incorporated town or city having a special charter and containing 10,000 inhabitants or less, has the power and authority by ordinance to license, tax, regulate, or suppress private hospitals.[10]

§ 327. **Montana.** The State Board of Health is to make an inspection once in each year, and at such other times as it may be directed to do so by the Governor of all public institutions and make a report as to their sanitary conditions with suggestions and recommendations to their respective boards of directors or trustees.[11]

§ 328. **Nebraska.** No person is to conduct or maintain a maternity home or house, or lying-in hospital without a written license from the Department of Public Welfare. The application for the license is to be approved by the local board of health. The license is issued by the Department of Public Welfare for a term of one year, the fee being $3.00. The local board of health is to visit and inspect the premises, and the number of patients kept is not to exceed the number specified in the license. The Department of Public Welfare may revoke a license when the hospital is maintained without

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10 Same, Sec. 8713, R. S. 1909, Sec. 9591.

The imposition of a license tax may be referable to the taxing power, or police power, or to both: to the police power alone if the object is merely to regulate, and the amount exacted is only sufficient to pay the expense of enforcing the regulation; and to the taxing power alone, if its main object is revenue. City of Lamar vs. Adams, 90 Mo. App. 35. In the same case it was said that where the license fee exacted is far in excess of the reasonable expense in enforcing any regulation, it will be held that the main object of the tax is revenue; and especially if it is provided that the amount exacted shall be paid into the general revenue fund.

Under some circumstances the words "to license" may imply the power to tax; but in such cases there must be manifest intention to grant this power, since the words taken alone will not generally confer that authority. When the power to tax as well as to license is given in express terms, the city may collect a tax for revenue by way of a license, unless there is some other provision of the law which requires a different construction to be placed on the words. 1899, St. Charles vs. Elsner, 155 Mo. 671.

It is in the power of the State Legislature, unless restrained by the Constitution, to prohibit or restrict the exercise of any trade or business within such State; and there is no such restraining clause in the Constitution of this State. 1847, Austin vs. State, 10 Mo. 591.

The exclusive power to grant a license includes the power to withhold a license and thus make the license granted exclusive of all others. 1887, Carroll vs. Campbell, 25 Mo. App. 630.

11 Revised Code 1907, Sec. 1475.

due regard to the health, comfort, or morality of inmates. Written notice is to be given. The births are to be attended by a legally qualified physician who reports to the board of health of the city or village.[12]

All cities of 100,000 inhabitants or more have power to erect, designate, establish, maintain, and regulate hospitals.[13]

§ 329. **Nevada.** Nevada apparently gives to the city council of any city or town the right to regulate hospitals.[14]

§ 330. **New Hampshire.** No person or corporation is to locate, conduct, or maintain a sanatorium or asylum for the reception of persons of unsound mind or for the treatment of specific diseases except first having obtained a license so to do from the State Board of Health.[15]

Application for the license is to be made to the State Board of Health and all facts relating to the character thereof are to be thoroughly investigated by the Board. The Board may, at their discretion, issue a license to the applicant with such restrictions and regulations as they may deem necessary to protect the interests of the State. The State Board of Health in its discretion may revoke or suspend the license. Any sanitarium or asylum so maintained is to be open to inspection by the State Board of Health at all times.

The State Board of Health is constituted a Commission of Lunacy and is, without previous notice, to visit and make a thorough inspection of all asylums and other institutions for insane persons in the State, as often as once in four months. They are to examine the care and treatment of the insane, the sanitary condition of each asylum or institution, and other matters relating to the general welfare of the inmates. Superintendents must report to the Commission.[16]

The State Board of Charities and Corrections may issue a license subject to revocation by it, to any person whom it may deem suitable and responsible, to establish or keep for two years, within a city or town of the State, a lying-in hospital, hospital ward, or other place for the care and treatment of women in labor, if the local board of health shall first

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12 Laws 1919, C. 190, p. 785.

13 Laws 1921, C. 116, Sec. 28, amending Rev. Stats. 1913, C. 46.

14 Rev. Code 1912, Sec. 794, Subd. 57.

15 N. H. Laws 1917, C. 103, p. 591.

16 P. S., Ch. 10, p. 91.

certify that the place is suitable for such purposes. The State Board of Charities and Corrections has supervision of all such places and is to make rules necessary for their regulation and may designate agents to visit and inspect the same. The institution is also subject to visitation by the head of the police department, or his authorized agent, or the board of health of a city, or by the chief of police, selectmen, or board of health of a town, and if during the year it receives more than six patients, by the State Board of Health or its authorized agent.[17]

§ 331. **New Jersey.** All asylums, homes, sanitariums, retreats, hospitals, institutions, or corporations operating or to operate to care and treat for compensation persons who are insane or suffering from mental disorders are to be licensed by the State Department of Charities and Corrections. When an application for license is made, it is to be accompanied by a plan of the premises proposed to be occupied, with a description of its capacity, location, the number of patients to be received, etc. Investigation into the merits of the application is to be made. At least twice each year or oftener the "facilities and equipments and sanitary conditions, accommodations, and manner of management of all such licensed institutions" are to be inspected by the department to determine the conduct.[18]

No person, association, or corporation is to locate, construct, or establish in any city, town, borough, township, or other municipality of the State, any hospital, sanatorium, preventorium, or other institution for pulmonary tuberculosis without the consent and approval of the State Board of Health, application to be made in writing, giving location, description, map, etc., and hearing is to be held. The State Board of Health has sole authority to grant consent, and the consent of the local board is not necessary. The act does not apply to institutions used during the summer only.[19]

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17 Supp. 1901-1913, p. 164; Laws 1911, C. 98.

18 Comp. Stats. 1910, p. 3202, Sec. 107; P. L. 1906, p. 561, same as P. L. 1895, p. 126.

19 Comp. Stats. 1910, p. 2749; P. L. 1910, p. 93.

An earlier act provided that consent of the governing body or board of the township, town, village, borough, city, or other municipality in the form of a resolution or ordinance was necessary before the construction of a tuberculosis hospital for profit but by the case of 1910, Ventnor

All county hospitals for the care of tuberculosis are subject to inspection by any duly authorized representative of the State Commissioner of Charities and Corrections, of the State Board of Health, and the board of chosen freeholders of the county.[20]

It is not lawful to establish or maintain either permanently or temporarily any pesthouse, hospital, or building for the treatment of contagious diseases within any city or town without first obtaining the consent thereto of the governing body of such city, town, township, borough, or other municipal corporation.[1]

Cities of the first class are authorized to establish and maintain dispensaries for the free distribution of medicines among the poor of the city, and it is the duty of the city board of health to locate the same, and make rules and regulations for the proper conduct and management thereof.[2]

City vs. Home, 77 N. J. Eq. 464, 78 Atl. 677, it does not apply to institutions not conducted for profit.

20 Comp. Stats. 1910, p. 2758, Sec. 32; P. L. 1910, p. 136.

1 Rev. Stats. 1910, p. 3495, Sec. 152; P. L. 1895, p. 822.

2 Rev. Stats. 1910, p. 2734; P. L. 1902, p. 634.

In the case Board of Health of Ventnor City vs. North America Home, two bills were filed to prevent the defendant from conducting in Ventnor City a sanatorium for the treatment of tuberculosis, one by the Board of Health and one by the individual property holder. The institution in question was not for the treatment of pulmonary tuberculosis but "to be devoted execlusively to the treatment of children who are afflicted with bone tuberculosis." The institution was not to be maintained for profit and "the provisions of P. L. 1907, p. 411, requiring a municipal license in certain cases have no application to an institution which is not conducted for profit.

"It is urged in behalf of complainants that the Legislature of this State has declared bone tuberculosis to be a communicable disease . . . Throughout the act the word 'tuberculosis' is used without qualification and some of its provisions are clearly inapplicable to bone tuberculosis . . . Whether any of the provisions of that act are intended to include bone tuberculosis it is here unnecessary to consider; but I am convinced that the legislation referred to cannot properly be deemed operative to render the institution conducted by the defendant a nuisance per se.

"As the present record discloses that the work to be conducted by defendant is a lawful work and is not a source of danger, and is to be conducted in a proper manner and will not occasion real injury to others, I will advise an order denying a preliminary injunction." 1910, Board vs. Home, 78 Atl. 677.

The erection and operation by a county on its own land of a hospital for patients afflicted with pulmonary tuberculosis which would materially reduce the market value of adjacent real estate did not justify injunctive relief against the erection and operation of such hospital, where no danger to health existed or could be reasonably apprehended from the operation of the hospital, since a

§ 333. **New York.** No charitable organizations, including hospitals, dispensaries, etc., are to be incorporated without the approval of the State Board of Charities. A hospital camp or other establishment for the treatment of pulmonary tuberculosis is not to be established by any town until after consent of the State Commissioner of Health is given. There is to be a petition for hearing, a hearing on site, etc. The determination of the State Commissioner of Health and the local health officer is final and conclusive. If they are unable to agree, it is referred to the Lieutenant Governor, the Speaker of the Assembly and the State Commissioner of Health.[3]

The State Board of Health is to license maternity hospitals or lying-in asylums. Each license is to specify the name and residence, etc. No such institution is to be incorporated except with the written consent and approbation of a justice of the Supreme Court; upon the certificate in writing of the State Board of Charities approving of the organization and incorporation of such institution.[4] Every license of a

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person cannot be denied the right to make a lawful use of his property, merely because such use injures the market value of his neighbor's property. 1915, City of Northfield vs. Board of Chosen Freeholders, 85 N. J. Eq. 47, 95 Atl. 745.

The question arose over the notice to members of the Board of Health concerning the establishment of county tuberculosis hospitals. Under Sec. 319 of the Public Health Law the State Commissioner of Health and the local health officer were constituted a board to approve or disapprove the establishment of a county hospital for tuberculosis. As enacted the "Legislature did not contemplate authorizing the State Commissioner of Health to substitute a deputy or agent on the board provided for in the section . . . The Legislature has pointed out a particular officer to act, not as a State Commissioner of Health, but as a member of a board specially constituted to perform a particular duty." The State Commissioner of Health had no authority to delegate his powers to act as a member of such board to a deputy or any other person, and a board of which the Commissioner is not a member has no jurisdiction. 1916, Buckhee vs. Biggs, 171 N. Y. App. 373, 156 N. Y. S. 1038.

Two provisions or jurisdictional prerequisites must be filled, the giving of the notice and the formation of the board. "Where a statute prescribes that certain conditions must be performed in order to give jurisdiction to act, there must be full compliance with the statute, unless there is some legitimate and controlling influence for non-performance." Until these requirements of the notice and formation of the board are filled, there is no authority to act.

[3] Consol. Laws, p. 4544; L. 1909, Ch. 49, Sec. 319; L. 1893, Ch. 661, Sec. 218-a as added L. 1903, Ch. 638.

[4] Consol. Laws, p. 3828, L. 1909, Ch. 88, Sec. 482.

maternity hospital is revocable at will by the authority granting it. Monthly re-inspections are to be made by the local health officer or his authorized agent and every license expires May 31 but may be renewed after re-inspection.[5]

A dispensary is declared to be a place which either gratuitously or for compensation furnishes "medical or surgical advice or treatment" to persons non-resident therein.[6]

The State Board of Charities may issue a license on application to all dispensaries legally incorporated and to the unincorporated dispensaries conducted in connection with incorporated institutions, April 18, 1899. The Board is to make rules and regulations and alter and amend the same in accordance with which a dispensary shall manage or conduct its work. The Board may at any and all times visit and inspect licensed dispensaries and after due notice and opportunity to be heard, if the public interest demands, and for a just and reasonable cause, may revoke the license.[7]

The Commissioner of Health is from time to time to submit to the several municipalities of the State, such recommendations as he may deem wise as to the establishment of hospitals for contagious diseases, indicating the extent of such provision, etc. He is to inspect all such hospitals and report annually as to their condition. The public health

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5 L. 1921, C. 555, Sec. 1706.

Wagner vs. Hagan upheld the constitutionality of the power to license maternity hospitals and lying-in asylums as a means of preserving public health. "The requirement of a license for such an institution is to enable the public authorities to make proper sanitary regulations as to such institutions, so that inmates should not be exposed to infection or the dangers that arise from improper medical attention, and also to insure that it shall not be perverted to an improper purpose. While no attempt is made to regulate the confinement of persons wherever they happen to be living, the Legislature has deemed it proper to regulate institutions or hospitals established or maintained for the treatment of such persons, and such a regulation, it seems to me, comes clearly within the power of the Legislature. . . . It is generally conceded that the Legislature has the right to determine what laws are needed to preserve the public health and protect the public safety." 65 N. Y. S. 120; affirmed without opinion. 165 N. Y. 607, 58 N. E. 1091, 1900.

6 This according to an opinion of the Attorney General, does not include corporations formed for the practice and supplying of medicine for compensation. Report of Attorney General 1902, 170.

7 Consol. Laws, p. 5456, Sec. 290; L. 1896, Ch. 546, Sec. 19, as added by L. 1899, Ch. 368; 1909, Ch. 258, Sec. 352.

council may from time to time establish regulations for the maintenance of hospitals for contagious diseases.[8]

All institutions of a charitable or eleemosynary character, all asylums, hospitals, and institutions, whether state, county, municipal, incorporated or not incorporated, private or otherwise, except institutions for the insane, are subject to the visitation, inspection, and supervision of the State Board of Charities, its members, officers and inspectors. Such institutions may be visited by the Board, etc., at any and all times; information may be required and they shall have full access to the grounds. The Board may prepare regulations and reports for the institutions.[9]

The Board may direct an investigation by a committee of one or more of its members, of the affairs and management of any institution, society, or association subject to its supervision or of the conduct of its officers and employees.[10]

The State Commission on Lunacy, now known as the State Hospital Commission, is to examine all institutions, public and private, authorized by law to receive and care for the insane, and inquire into their methods of government and management, the condition of buildings, property, etc.[11]

The Board as medical inspector may visit any sanitarium where sick or infirm persons are received, cared for or treated, for compensation or hire, for the purpose of ascertaining whether insane persons are confined therein, contrary to provisions of law.[12] The board is to make rules and regulations concerning the custody and care of the insane.[12]

Private institutions for the insane must have a license from the Commission. An examination of premises is to be made before granting the same and the Commission may at

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8 Sup. 1913, p. 2047; L. 1913, Ch. 559, Sec. 4-c.

9 C. & G. Consol. Laws, p. 5380; L. 1909, Ch. 57, Sec. 10; L. 1896, Ch. 546, Sec. 10, Rev. L. 1867, Ch. 95, Secs. 4-6; L. 1873, C. 571, Sec. 41; L. 1893, Ch. 771, Secs. 8, 9, 10, 11.

10 Consol. Laws, p. 5382; L. 1909, Ch. 57, Sec. 13, etc.

11 L. 1912, Ch. 121; Consol. Laws, p. 2443; L. 1909, Ch. 32, Sec. 6.

By the Constitution the State Commission on Lunacy is given power to inspect and visit institutions for the insane, not including institutions for epileptics and idiots (Const. Art. 8, Sec. 11). The State Commission on Lunacy has, however, no authority over such persons as voluntarily submit to treatment in a private institution. (Rept. of Attorney General, 1897, 144 same, p. 244.)

12 Consol. Laws, p. 2445.

any and all times examine and ascertain how far the institution is conducted in compliance with the license. The license may be revoked after notice and hearing.[13]

§ 334. **North Carolina.** The State Board of Health is to approve or reject all plans for county or municipal tubercular sanitariums and hospitals,[14] and is to inspect all public or private hospitals and sanatoriums.[15]

Every incorporated city or town, through its governing body, may make rules and regulations for the management and conduct of all hospitals and sanatoriums for treatment of patients afflicted with any infectious, contagious, or other communicable diseases.[16]

The State Board of Charities and Public Welfare is to

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13 Consol. Laws, p. 2469; L. 1909, Ch. 32, Sec. 59; amended 1912, Ch. 121; amended 1920, Ch. 860.

The charters of individual cities may give the power to license or issue permits for the establishment and maintenance of private hospitals as in the case of New York City (Secs. 1167, 1172). Under the charter of the City of New York (Secs. 1167, 1172) the board of health had no power to refuse a permit for a private hospital for the treatment of medical, surgical, and obstetrical cases, as required by its sanitary code (Sec. 220) when all other conditions were satisfactory, and no offense to the senses was suggested, for the exclusive reason that considerable damage would accrue to surrounding property.

Where the action of the board of health of the city of New York, the head of the department of health in refusing permit for a private hospital was unauthorized, unreasonable, and arbitrary, the aggrieved person's remedy was mandamus. "The board has general jurisdiction over the establishment and maintenance of hospitals, including the licensing of hospitals. On an application for a permit, it should consider and give proper weight to all ordinary contingencies and circumstances appropriate to the subject which requires the exercise of discretion. The element of location may be material. The effect of a proposed location on property values in the neighborhood need not be wholly disregarded, and may even become decisive in a case otherwise doubtful. But the authority now conferred on the board does not include, expressly or by reasonable implication, the power to refuse a permit, as has been done in this case, when all other conditions are satisfactory, and no offense to the senses is suggested, for the exclusive reason that "considerable damage would accrue to the surrounding property if the permit were granted." That reason considered alone came not legally within the scope of its discretion. The property rights of one owner may not be subordinated to the property rights of his neighbors, except as incident to the exercise of authority reasonably conferred for the general welfare." 1919, People ex rel. Sprenger vs. Dept. of Health of City of New York, 226 N. Y. 209, 123 N. E. 379, affirming 174 N. Y. S. 917, which affirmed 172 N. Y. S. 38.

14 Consol. Stats. 1919, Sec. 7277.

15 P. L. 1923, p. 486.

16 Same, Sec. 2788, 1917, C. 136, Sub. Ch. 5, Sec. 5.

license all private hospitals, homes, or schools for the cure and treatment of insane persons, idiots, feeble-minded persons, and inebriates. They are at all times subject to visitation by the Board. The Board may bring an action in court to vacate or annul a license in the Superior Court of Wake County for gross neglect, cruelty, or immorality.[17]

Any county, city, or town may establish a hospital for the maintenance, cure, and treatment of such insane persons as cannot be admitted into a state hospital, as private hospitals. The State Board of Charities and Public Welfare is given the same authority over them.[18]

§ 335. **North Dakota.** The State Board of Administration has the power to license, supervise, and regulate maternity hospitals and lying-in places.[19]

§ 336. **Ohio.** All infirmaries, hospitals, medical institutions, asylums, and other buildings used for the assemblage or betterment of people in the State are to be inspected with special reference to precautions for the prevention of fires, the provision of fire escapes, exits, emergency exits, hallways, air-space, and such other matters which relate to the health and safety of those occupying or assembled in such structures. A written report of such inspection is to be filed with the chief inspector of workshops with a copy of the notice to the mayor or prosecuting attorney. The plans for the erection of such structure, and for any alterations or additions are to be approved by the inspector of workshops and factories, except in municipalities having regularly organized building inspection departments, in which case the plans are to be approved by such department.[20]

The Commissioner of Health has the power to define and classify hospitals and dispensaries. Within thirty days after the taking effect of the act, and annually thereafter, every hospital and dispensary, public or private, is to register with and report to, the State Department of Health, on forms furnished by the Commissioner of Health, such information as he may prescribe.[1]

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17 Consol. Stats. 1919, Sec. 6219; 1899, C. 1, Sec. 60.

18 Same, Sec. 6220.

19 S. L. 1923, p. 4.

20 Code 1921 (Throckmorton), Secs. 1031, 1032, 1033, 1035; 99, V. 233, Secs. 12, 35.

1 Code 1921 (Throckmorton), Secs. 1236-6; 108 V. Pt. 1, 46.

Each public or private hospital, or private asylum, is to be open at all times to the inspection of the commissioners of the county or the board of health of the township or other municipality in which such institution is situated.[2] At least once every six months every county commissioner is to visit unannounced each such institution situated in his county, note its sanitary condition, and the condition and treatment of the inmates thereof.[3] A report of these investigations is to be filed with the prosecuting attorney of the county, open to the examination of the public.[4]

The Commissioner of Health may grant licenses to maintain maternity hospitals or homes, lying-in hospitals, etc. Application must first be approved by the board of health of the city, village, or township in which the institution is maintained. A record of the license is to be kept by the State Department of Health which notifies the local board of the granting of such license. The license may be granted for a term of one year, and is to specify the name, location, number of patients, etc. The Commissioner of Health and the boards of health of cities, villages, or townships are annually to visit and inspect the system, conditions, and management of such institutions. They may do so at any time. The license may be revoked if the institution is maintained without regard to the health, comfort, or morality of the inmates thereof, or without due regard to sanitation and hygiene.[5]

§ 337. **Oklahoma.** The Commissioner of Charities and Corrections is to visit, inspect, and inquire into the condition and management of "all eleemosynary institutions of whatever name or character, at least once each year." He is to visit, inspect, and inquire into the condition and management of all county almshouses, pesthouses, and charitable institutions at least once each year, and make recommendations in writing to the board of county commissioners. He is to inspect

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2 Same, Sec. 2497; 92, V. 212, Sec. 1.

3 Same, Sec. 2498; Same, Sec. 2.

4 Same, Sec. 2499; 92 V. 217, Sec. 3.

5 Code 1921 (Throckmorton), Secs. 6259-6265; 99 V. 2, 13; 99 V. 14; 108 V. Pt. 1, 47.

these municipal institutions and make report to the mayor and city council.[6]

He is to visit, inspect and examine into the records of all hospitals, infirmaries, and dispensaries, retreats, lying-in hospitals, etc., and on approval issue a certificate authorizing them to operate for a period of one year.[6]

§ 338. **Oregon.** Each benevolent or charitable institution wishing to secure state aid must make application therefor to the State Board of Health for a certificate. Application is made showing how many children are cared for, etc. The Board is to investigate the affairs and methods of the institution. It has also visitorial power over all institutions. The application is to be accompanied by a statement of the number of patients to be treated, the accommodations, etc. The fee is $5.00 per year. The county court at all suitable times may investigate the methods, care, and treatment of patients, inspect buildings and equipment, etc. A report is to be filed with the county clerk as a public record.[7]

§ 339. **Pennsylvania.** The board of health of any locality may license persons to establish and keep lying-in hospitals upon written application filed with said board and accompanied by the endorsement of six or more reputable persons, citizens of the county where such hospital may be situated, who shall certify the respectability of the applicant and that such institution shall be used only for legitimate, moral, and charitable purposes. After inquiry and the payment of fee, the board may issue a license. The hospital is subject to visitation or inspection by the board of health granting the license or a special officer appointed by the Court of Common Pleas on petition of any society for the prevention of cruelty to children of the proper county.[8]

The Board of Public Charities has supervision over all houses or places in which any person of unsound mind is detained, whether with or without compensation. The Committee on Lunacy is to report annually on the management and conduct of the hospitals, public and private, almshouses and all places in which the insane are kept for care, treat-

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6 R. L. 1910, Secs. 8091, 8092, 8093, 8094, 8096; L. 1907-8, p. 267.

7 Stats. 1920 (West), Sec. 8520, etc.; L. 1911, C. 65, Sec. 1-4.

8 Stats. 1920 (West), Sec. 14504, 1893, April 26, P. L. 24, Sec. 1.

ment, or detention. The Board has power, with the consent of the Chief Justice of the Supreme Court and of the Attorney General, to ordain rules and regulations on the licensing of houses for the detention of lunatics, treatment, etc. The Board may from time to time exempt any particular hospital established by the State or any municipal authority, or any eleemosynary institution from the obligation to apply for and obtain a license. It has power to visit and withdraw licenses.[9]

In cities of the first class the board of health has charge of the supervision of hospitals.[10]

In cities of the second class the Department of Charities and Corrections has supervision over hospitals,[11] though cities may regulate the construction and equipment of buildings, fire escapes, equipment, arrangement, maintenance, etc., of hospitals, asylums, etc.[12]

§ 341. **South Carolina.** The State Board of Charities and Corrections is to pass on the incorporation of charitable or eleemosynary institutions and is to investigate "the condition, management, and affairs of all charitable and eleemosynary undertakings whether incorporated or otherwise." Annual reports and returns may be required. The Board is to pass annually on the fitness of every such corporation, association, or enterprise, and when satisfied as to the conduct, etc., shall issue the association or agency a certificate or license for one year. The institution is not to solicit funds beyond the home county without this license. The Board may revoke the license for failure to comply with the law or "whenever, in its judgment, the work contemplated or carried on by said body is no longer needed or is no longer desirable for the public good." Appeal may be taken to the Circuit Court.[13]

Cities of over 40,000 inhabitants are authorized to require the payments of such sums of money, not exceeding $2,500 for license, as in their judgment may be just and wise, "by

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9 Stats. 1920 (West), Secs. 14314, 14315, 14319; 1883, May 8, P. L. 21, Secs. 1, 2, 4, 7.

10 Stats. 1920 (West), Sec. 3024; 1919, June 25, P. L. 581, Art. VII, Sec. 3.

11 Same, Sec. 3705; 1901, March 7, P. L. 20, Art. X, Sec. 1.

12 Same, Sec. 3876, 1915, May 13, P. L. 297, Sec. 1 f.

13 Acts 1920, No. 448, p. 838.

any person or persons or corporations engaged or intending to engage in any calling, business, or profession, in whole or in part, within the limits of said cities."[14]

§ 342. **South Dakota.** The Commissioner of Insurance is to inspect all hospitals accommodating more than one hundred persons, and determine whether or not they are safe and provided with proper exits and means of escape from fire. When he finds them in an unsafe condition, he is to notify the proper authority in writing to place the same in proper condition, specifying in what particulars such building must be altered and maintained.[15]

The State Board of Health has power to control the management of lying-in houses and boarding places for infants and the treatment of infants therein.[16]

All cities have the power to erect and establish hospitals and medical dispensaries, and to control and regulate the same.[17]

§ 343. **Tennessee.** Private institutions for the custody, care, and treatment of insane, inebriates, dipsomaniacs, and drug habitues, may be established and maintained for compensation, provided there are suitable hygienic buildings and the arrangement and structure furnish proper restraint and protection for the inmates. The institution is to be under the direct control of a reputable licensed physician with at least five years' experience in treating insanity or drug and alcoholic addictions. These institutions are not to be operated without a license from the clerk of the county court wherein such institution is located. The license is not to be issued until the applicant delivers to the clerk a sworn statement of the proposed physician in charge showing that he is qualified, and "if the institution be for treating persons addicted to drug or alcoholic habits, that the patients so affected and treated at such institution from and after the passage of this Act, not less than ninety per cent of same have been cured of the particular addiction of which they were affected when discharged as cured by said institution."[18]

§ 344. **Texas.** Maternity hospitals are to obtain an

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14 Code 1912, Sec. 3071.

15 Code 1919, Sec. 9137; 1917, C. 280, Sec. 9.

16 S. D. 1919, Rev. Code 7667.

17 Rev. Code 1919, Sec. 6170-10.

18 Acts 1909, C. 488, p. 1774.

annual license from the State Board of Health. The application is to state the name of the licensee, the address of the premises to be licensed, the location, and the number of patients to be treated. The application is to be approved by the local health officer.[19]

The city council of cities, towns, or villages is authorized to erect or establish one or more hospitals and to control and regulate the same, and to permit and regulate the establishment of private hospitals.[20]

§ 345. **Utah.** Maternity houses and hospitals are to be licensed by the State Board of Health. No institution is to be established within two hundred and fifty feet of any church building, university, school, or other institution of learning, or a public park, or within fifty feet from the premises owned by another. The applicant is to file with the State Board of Health the name or description of the premises, etc., and the premises are to be inspected. The State or local Board of Health, or its agents, the Juvenile Court or the Child Welfare Board, are to be permitted to visit and inspect the premises, the last two at least once in six months. The permits may be revoked after reasonable notice.[1]

No city, county or municipal corporation or public or private corporation or person or association or persons after April, 1921, are to establish or maintain any asylum, hospital, house, building, or premises for the detention of persons with communicable disease, without first having obtained a permit in writing from the State Board of Health. This does not apply to general hospitals for the treatment of diseases, obstetrics, and surgical cases. Application must describe premises, use, purpose, etc.[2]

§ 346. **Vermont.** The State Board of Supervisors of the Insane may, after their investigation, license for not less than two nor more than six years, any suitable person to keep a private hospital for the care and treatment of the insane subject to the visitation of the Board. The license may be revoked when it appears to the Board "that the holder thereof does not exercise sufficient skill and is not possessed

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19 Laws of 1921.

20 Civil Stats. Anno. Art. 840; Acts 1875, p. 256, Sec. 37.

1 L. 1919, C. 48, p. 128.

2 L. 1921, C. 59, p. 152.

of adequate means and methods for the proper care and treatment of the insane." Notice of the revocation of the license is to be given the hospital.[3]

A person, association, corporation, municipality, or county that desires to establish or maintain in the State a camp, hospital, sanatorium, or other resort for the care or treatment of persons afflicted with tuberculosis, shall first obtain written permission from the State Board of Health. A hearing is to be had by the Board.[4]

The location of county tuberculosis hospitals is to be approved by the State Board of Health.[5] The Board of Health may advise with municipal officers, as to the erection, construction, heating, ventilation, and sanitary arrangements of public buildings, and the Board may compel the owners thereof to provide them with the necessary appliances and fire escapes for the safety of individuals who may be in such building.[6]

The Board of Charities and Probation has the power of visitation and inspection over all institutions chartered by the State for the care of dependent classes which solicit public support for their work.[7]

The State Board of Health is directed to place itself "in communication with the local board of health, the hospitals, asylums, and public institutions throughout the State, and shall take cognizance of the interests of health and life among the citizens generally." They are to act as an advisory board in all hygienic and medical matters, "especially as relate to the location, construction, and sewerage, and administration of hospitals, asylums, and other public institutions."[8]

The local board of health is to issue licenses for the erection, conduct, establishment, or maintenance of maternity hospitals or lying-in asylums on recommendation of the State Board of Charities and Corrections.[9]

Licenses are to be issued before spirits, ethyl or grain

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3 Gen. Laws 1917, Sec. 4350; 1888, No. 92, Sec. 1.

4 Vermont, 1917, Gen. Laws, Sec. 6241.

5 Same, Sec. 4370.

6 Same, Sec. 6197; 1908, No. 159, Secs. 9, etc.

7 Same, Sec. 7313; 1917, No. 244, Sec. 18.

8 Code 1904, Sec. 1715, 1871-2, p. 71; 1895-6, p. 674; also Code 1713-d, Subd. 4.

9 L. 1916, C. 436, p. 75; L. 1912, C. 43, p. 75; 1910, C. 121, p. 880, Supp. 1910.

alcohol, etc., may be sold to a hospital. The license is to be granted by the judge of the county court.[10]

§ 347. **Virginia.** Any person or corporation, not being a superintendent of the poor, that erects, conducts, establishes, or maintains a maternity hospital or lying-in asylum shall on and after July 1, 1910, obtain, on the recommendation of the State Board of Charities and Corrections, a license to conduct such business from the local board of health of the city or county in which the business is carried on. The State Board of Charities and Corrections, through any member, officer, or duly authorized inspector, is authorized to visit and inspect.[11]

§ 348. **Washington.** The State Board of Health, the State Board of Control, the State Board of Supervision and Control of Public Officers, and the board of county commissioners are authorized to inspect county tuberculosis hospitals.[12]

§ 349. **West Virginia.** All institutions, hospitals, lying-in or maternity houses, or associations receiving children, are subject to visitation, inspection, and supervision by the State Board of Children's Guardians, other than state institutions subject to the management of the State Board of Control. It is the duty of the Board to pass annually on the fitness of these institutions and, if satisfied, to issue a certificate for one year, unless sooner revoked. Information and reports may be required.[13]

No private hospital for the care and treatment of the insane for compensation is to be established unless a permit is obtained first from the State Board of Control. Application is to be accompanied by plans and the Board has the right to inspect and investigate.[14]

§ 350. **Wisconsin.** The State Board of Control is to investigate and supervise, among others, all the charitable, curative institutions of every county and municipality, all hospitals and asylums, and familiarize itself with all the circumstances affecting their management and usefulness. The State Board of Control, with the advice and approval of the

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10 1918, No. 388, p. 578, Sec. 14.
11 Virginia, Acts 1910, Ch. 121, p. 177.
12 L. 1913, C. 172, p. 595, Sec. 7.
13 L. 1921, C. 134, Sec. 11, p. 502.
14 L. 1915, C. 51, p. 352, Sec. 28.

State Engineer, is to ascertain and fix reasonable standards and regulations for the construction, repair, and maintenance of asylums for the insane, tuberculosis hospitals, and sanatoriums, with respect to their safety, sanitation, and adequacy and fitness for the needs of the community which they are to serve. The establishment of, the purchase of the site, and the erection of buildings for any such institution is to be subject to the approval of the State Board of Control. The plans and specifications are to be approved as conforming with standards and other requirements of law. Before the occupancy of any building and semi-annually thereafter, the Board is to cause the building to be inspected with respect to its safety, sanitation, adequacy, and fitness. If the work is not completed state aid is not to be allowed.[15]

Every lying-in hospital, hospital ward, or other place for the reception, care, and treatment of pregnant women is to obtain an annual license which is to be issued by the State Board of Health without fee. The license is not transferable and may be revoked for reasonable cause. The license is to state the name, location, number of inmates which shall be boarded at any one time, and shall be approved by the local health officer. The local health officer is to be informed of the issue of licenses and is to visit and inspect the same from time to time at reasonable times.[16]

An annual report is to be filed with the State Board of Control by all private institutions for the insane or feeble-minded.[17]

§ 351. **Wyoming.** The State Board of Health is authorized to require reports and information from all public or private dispensaries, hospitals, asylums, etc., concerning matters and particulars "in respect to which they may in their opinion need information for the proper discharge of their duties."[18]

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15 Laws 1919, C. 328, p. 388, Sec. 46, 17 amended.

16 L. 1919, C. 616, Sec. 58.04.

17 L. 1919, C. 616, Sec. 58.05.

18 Comp Stats. 1910 (Mullen), Sec. 2901; L. 1901, C. 55, Sec. 8.

CHAPTER X

HOSPITAL ORGANIZATION AND ADMINISTRATION

§ 360. **Organization of the Corporation.** When an institution is a private corporation, whether organized for profit or not for profit, the charter, constitution, and by-laws are the source and determinants of all powers and duties exercised by such organization acting by or through its officers and agents. It is customary to have a board of trustees, directors, or regents; this may in fact be a statutory requirement qualified by the statement as to the numbers of resident directors, trustees, or regents to be required. The actual work of the institution is, as a rule, carried on by the superintendent and staff of physicians or surgeons. These usually are selected by the board under rules and regulations prescribed by them and which may include such limitations as the board may see fit to introduce. The board then has a right to make and enforce reasonable rules and regulations and to select and retain a competent staff under such limitations as the by-laws specify.

§ 361. **Choice of Staff Members.** State laws have not regulated the choosing of hospital staffs except in Montana, where it has been provided by statute that every person, persons, corporation, or association conducting a hospital . . . not held for private or corporate profit or . . . that are institutions of purely public charity . . . exempt from any state, county, or municipal tax . . . shall not in any manner discriminate between the patients of any regularly licensed physician by reason of the fact that said physician is not a member of the medical staff of said hospital, or for any other reason, and such hospitals are hereby compelled to admit and care for the patients of any regularly licensed physician or physicians under the same terms . . . as the patients of any other licensed physician. This statute has never been passed upon by the Supreme Court of the State. Violation with intent

to injure any patient or the practice of any physician or surgeon is declared a misdemeanor.[1]

A few cases involving the choice of members of the staff have been decided. An action was brought by a physician to enjoin certain physicians, as members of the hospital staff, and the hospital, from interfering with his practice in the hospital.[2] A voluntary association, according to the decision, has the power to enact laws governing the admission of members and to prescribe the necessary qualification for membership.[3] Membership therein is a privilege which the society may accord or withhold at its pleasure, with which a court of equity will not interfere, even though the arbitrary rejection of the candidate may prejudice his material interest.[4]

"We think," said the Court, "that such a society as the Potter County Medical Association is legitimate and lawful . . . The Association has the right to advance its purpose or interest and that of its members by all legitimate means. If it deemed the appellant an osteopath, and that as such he was supporting an exclusive system, the association and its members were within their rights, under its rules, in rejecting him as a member. They also had the right to refuse to assist him in operations. They could, if they deemed it to the interest of medicine or surgery, or the welfare of humanity, agree among themselves not to assist appellant in surgery if they did so in good faith and with no intent to injure appellant."[5]

"We believe it to be the right of the sanitarium to refuse business relations with appellant, if it sees proper to do so, and also to adopt such regulations as are proper or deemed by it necessary or expedient to improve its efficiency and standards of service therein and to require of those using its equipment that they possess specific medical learning and equipment in order to receive a membership on the medical staff. To accomplish this it was at liberty to employ, as it did in this case, the means to standardize the sanitarium. If in good faith, with no evil intent to injure or oppress, the appellee doctors who were so appointed and who did formu-

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1 Laws 1913, Ch. 114.

2 1910, Harris vs. Thomas (Tex.), 217 S. W. 1068.

3 Same, quoting 1890, Mayer vs. Stonecutter's Assn., 47 N. J. Eq. 519, 20 Atl. 492.

4 Same, quoting 1890, McKane vs. Adams, 123 N. Y. 609.

5 1872, Gregg vs. Massachusetts Medical Society, 111 Mass. 185, 15 Am. Rep. 24.

late the rules of standardization and name the staff as directed, they had the right to do so subject to no other control than the governing authorities of the institution."[6]

"Where the petition upon which the letters of incorporation are issued commit to a board of directors the management and control of a hospital to be maintained by the corporation, and no restrictions on the power of the board appear, they are empowered to adopt any regulation for the government of the hospital which is reasonable and consistent with the general purposes of the corporation."[7]

The board of directors adopted a by-law reciting that certain medical societies had adopted codes of medical ethics and providing that only physicians who complied with these codes should practice in the hospital. It was held that the by-law was reasonable and within the power of the directors to adopt and that a physician, whose only interest in the government of a hospital is the hope of gains and profits to arise from the practice of his profession therein is not a beneficiary of the trust, and has no standing in a court of law or equity to complain that the government of the hospital is such as to deprive him of profit that he might receive if other rules or modes were adopted for the management of the charity.[8]

The Court said: "It appeared from the proofs, appellant in order to obtain patronage, resorted to public advertising, and printed handbills or circulars wherein he promised radical and wonderful cures, and boasted of his superior medical knowledge, skill, and success, invited persons afflicted with diseases to employ him, set forth certificates showing that extraordinary success attended his treatment in many different cases, and proffered to examine patients and give medical advice without charge. It appeared also that in many instances he exacted notes from his patients in advance of rendering services to them, and in such notes inserted a clause to the effect that the consideration of the instrument was for the 'wages of a laborer.' It appeared also that the appellant, in the newspapers and by way of circulars, advertised

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6 1885, Donovan vs. Railway Co., 64 Tex. 519.

7-8 1896, People vs. Julia F. Burnham Hospital, 71 Ill. App. 246.

as an incorporated 'Medical and Surgical Institute and Sanitarium,' having a president and secretary, when in fact there was no such company.

"These practices and devices of the appellant were in flagrant disregard of the standard of professional conduct adopted by the association and societies of the learned and honorable profession of which he was a member, and are regarded by the great body of physicians and surgeons as unprofessional and discreditable, if not disreputable.[9]

"For such reasons the greater number of physicians and surgeons in the city and county wherein the hospital was located, as a mark of their condemnation of the conduct of appellant, and with the view of purging their ranks of the presence of one who had no regard for the dignity or standing of their honorable calling, determined they would not recognize him as worthy of association of reputable practitioners.[9]

"They so notified the directors of the hospital, and the directors were confronted with the question whether sick and afflicted in their care, or who should come to the institution for relief, should have the benefit of the attention, experience, skill, and learning of the great body of physicians and surgeons, or be committed wholly to the hands of the appellant.[9]

"The hospital had its existence for the purpose of extending relief to the sick and relieving their pain and suffering.[9]

"We think it was fully within their power to adopt the by-law in question and to enforce it. Under the by-law the appellant, in order to obtain admission to the hospital as a physician, had but to abandon practices which the common judgment of his professional brethren branded as discreditable, and which are so commonly resorted to by quacks and charlatans."[9]

The method of selecting the medical staff of a hospital does not affect the exemption of the hospital from taxation. It was urged that a certain hospital was, in fact being conducted, and its property used, for the benefit of certain physicians in the city of Peoria.[10] "The contention is based

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9 1896, People vs. Julia F. Burnham Hospital, 71 Ill. App. 246.

10 1907, Sisters of Third Order of St. Francis vs. Board of Review of Peoria County, 231 Ill. 317, 83 N. E. 272.

upon the fact that the board of managers of the corporation has established certain rules of government, by one of which no physicians are permitted to practice in the hospital except such as subscribe to and are governed by the principles of medical ethics promulgated by the American Medical Association. It does not appear from the record what percentage of physicians practicing in the city of Peoria would be eligible under this rule. It does appear, however, from the testimony of those Sisters who are in actual management of the hospital that they understand the rule permits all reputable physicians to treat patients in the institution, and that but few physicians practicing in Peoria are excluded. The Sisterhood does not provide medical attention. The patient is permitted to call any physician or surgeon he desires, who is not excluded by the rule in question. When the patient is unable to pay, he is treated free of charge by the medical profession practicing in the hospital. The question whether or not this is an institute of public charity depends not at all upon what class of physicians are permitted to practice there, so long as the institution is not conducted for the purposes of benefiting the physician of that class. A hospital is primarily for the benefit of the patient, and not the physician. Whether or not it is a charity is to be determined by the treatment which the patients receive at the hands of those in charge of the hospital.[11]

A private institution may govern its own internal affairs free from public intervention.[12]

§ 362. **Non-Interference of State in Management.** Where the corporation is private and is not administering funds contributed to its aid by the State, the State will not exercise visitorial power over its domestic affairs, and will not interfere with its government unless there has been unjust, unfair, and oppressive treatment.[13]

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11 1907, Same, 231 Ill. 317, 83 N. E. 272.

12 1901, Kobitz vs. Western Reserve University, 21 Ohio Cir. Ct. 144, 11 Ohio Cir. Ct. Dec. 515.

13 Where a student has been guilty of various breaches of duty of such a nature that it is injurious to the institution to allow him longer to remain as a student, and where opportunity has been afforded him to make full explanation before the faculty and present evidence of his innocence, and where the faculty has made a careful examination of his conduct and has found his acts to be such that he is a very undesirable student and his presence is injurious to the benefits of the

The rules of a charitable corporation for the support of old women provided that the matron of its home should admonish inmates for any violation of its rules; that if the violation continued, the managers should reprove the inmate guilty thereof; and that if this was ineffectual, the managers might take such action thereon as the circumstances might require. The managers reserved the right of dismissing any disobedient or troublesome inmate, but no vote of removal was to be passed by the managers unless the intention to propose such vote was inserted in the notices calling the meeting. It has been held that a woman who had been admitted as an inmate to the home, subject to these rules, could not maintain an action against the corporation to recover damages for her removal by the managers of the home and from a room which had been orally assigned to her therein, "although a payment of money had been required from her as admission; although she had never been admonished by the matron or reported by the managers; although she had no notice of the intention to remove her, and no opportunity to be heard thereon; and although the managers were actuated by malice in removing her; . . ."[14]

By the act incorporating a charitable asylum, the trustees were authorized to make all proper and necessary rules and regulations for the government of the corporation, not inconsistent with the Constitution and laws of the United States and of the State of New York. It has been held that by-laws adopted by the trustees forbidding the inmates to leave the premises without permission from the governor of the asylum, or one of his assistants, or indulging in contention or boisterous and disorderly conversation at table, on pain of expulsion, were reasonable, proper, and valid; and that for a breach thereof, by an inmate, the governor was authorized to dismiss the offender from the institution, by the direction of the executive committee.[15]

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university, they are justified in removing him from the institution. 1901, Kobitz vs. Western Reserve University, 21 Ohio Cir. Ct. 144, 11 Ohio Cir. Ct. Dec. 515.

14 1872, Gooch vs. Association, 109 Mass. 559.

15 On a charge being preferred against an inmate, of violating the rules, he was entitled to reasonable notice of the examination and an opportunity of being heard, of exculpating himself and of disproving the charge. However, the action and proceedings of the trustees, or the executive

§ 363. **Unlawful Detention of Patients.** A patient who has been admitted cannot be detained against his will in an institution, nor denied communication with his friends and family. The universal holding of the courts, is that such unauthorized restraint or retention of patients is unlawful. In the absence of express authority which has been granted by the Legislature, a hospital of any character whatsoever cannot retain patients any longer than they desire to remain. This is not true where patients have gone or have been taken to the hospital for purposes of isolation or by constraint of the public authorities.

It is axiomatic to say that a person may not lawfully be placed or detained in an insane hospital against his will unless actually insane. The confinement of a person who is dangerously insane is always justifiable but on the recovery of sanity one must be released. The questions of the determination of insanity, the commitment of the insane, etc., have been excluded here as fields with special interests and problems. But the more general questions will be discussed.

The care of the insane through state hospitals and institutions is regulated by statute, while the licensing of private hospitals, and the abolition or supervision of city or county institutions has brought the entire institutional group within the close purview of state authorities. The admission and discharge of patients is meticulously regulated. Within the last few years there has been developing an interesting field of so-called volitional admittants or voluntary patients. This group or individuals of the group wish psychopathic care or observation and apply voluntarily for such attention to the institution. The question then arises, can these patients be restrained and detained, assuming insanity, as are the other patients admittedly insane?

A Pennsylvania statute provides that "Persons voluntarily placing themselves in any of the houses provided for in this act, and who may be suffering from nervous diseases threatening mental disorder, may be received for a period of one month or less, by an agreement, which shall also specify

committee, in investigating such a charge, it seems, are not beyond the control of, or a review by, the Supreme Court. 1868, People vs. Sailors' Snug Harbor, 54 Barb. (N. Y.) 533.

the time, signed by them at the time of admission, and they may renew said agreement at the end of one month, but no agreement shall be deemed to authorize their remaining, unless signed in the presence of some adult person attending as a friend of the person applying, in the presence of and also by the medical attendant.[16]

The Michigan law provides that the medical superintendent or keeper of any institution, public or private, to which insane persons may be committed, may, when there is room for such voluntary patients therein, after providing ample accommodation for all public and private patients entitled to admission to said institution, receive and detain as a boarder and patient, any resident of this State who is desirous of submitting himself to treatment as a patient, and who makes written application therefor, and whose mental condition is such as to render him competent to make such application: Provided, the approval of the judge of probate of the county has been obtained in writing, . . . and such person shall not be detained for more than three days after having given notice in writing of his intention or desire to leave such institution.[17]

Some of the statutes punish the confinement or commitment:

It is unlawful in Alabama "to incarcerate, imprison, confine, or keep confined within a public or private hospital . . . any human being against the will and without the continuing consent of such individual unless such human being has been legally committed to the keeping and custody of such institution."[18]

Kansas fixes a penalty for conspiring to commit any person to a hospital or asylum unlawfully or for detaining any person contrary to provision of the act.[19]

The Mississippi Code penalizes every person or officer who shall maliciously send to or confine in an asylum, madhouse, or other place, any sane person as a lunatic or insane person, knowing such a person to be sane.[20]

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16 1920 (Mass.), Stats., Sec. 14290.

17 Mich. Comp. Laws, C. 50, p. 704, Art. 81, 1913, p. 121.

18 Alabama Gen. Acts 1919, No. 638, p. 883.

19 G. S. 1915, C. 108.

20 Miss. Code 1917, Crimes and Misdemeanors, p. 755, Sec. 1133.

The treatment or restraint of persons within the hospital may be regulated by statutes or controlled through the judicial control of abuse.

In Kansas[1] no patient shall be placed in restraint or seclusion in any hospital for the insane in this State except by order of the physician in charge or attendant physician; all orders are to be entered on records and subject to inspection.[2]

North Dakota provides that every person who has the care of an insane person, or is restraining such person either with or without authority, and treats such person with wanton severity, harshness, or cruelty, or in any way abuses such person, is guilty of a misdemeanor.[3]

Massachusetts provides that no restraint . . . or other apparatus or device interfering with free movement, shall be imposed upon any patient in any public or private hospital, sanitarium, or other institution for the care or custody of the insane in this Commonwealth, unless it is applied in the presence of the superintendent, or of the physician or of an assistant physician of the hospital, sanitarium, or other institution or on his written order, which order shall be preserved in the files or records of the institution; and such application shall be made only in cases of extreme violence . . . except in emergency cases . . . but every emergency case shall be reported immediately to the superintendent.[4]

Records of restraint must be kept and open for inspection at all times by trustees . . . and when not in use must be under lock and key. Restraint is to include therapeutic and chemical restraint and confinement in a strong room, or seclusion in solitary confinement, except when patients are placed in their rooms for the night. These provisions are not to apply to prolonged bath, cold pack, or medication when used as a remedial measure and not as a form of restraint.

§ 364. **Remedy for Unlawful Detention.** A writ of habeas corpus is a proper remedy where a prisoner in a hospital for the criminal insane has fully recovered his sanity but the authorities have failed to release him, as he is entitled

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[1] G. S. 1915, C. 108, Art. 2, p. 1962.

[2] L. 1901, C. 353, § 70.

[3] N. D. Comp. Laws 1913, p. 2356, § 10257.

[4] Mass. Acts 1911, p. 609, C. 589.

to his discharge even though the medical superintendent of the asylum and the board of administration have failed or neglected to adjudge him a fit subject to be discharged, and said authorities are bound to act in such case without a demand or request that the prisoner be released.[5]

It was contended that the Circuit Court had no jurisdiction to issue the writ of habeas corpus until the medical superintendent of the asylum and the State Board of Administration had adjudged the patient a fit subject to be discharged, or at least until a request for such action had been made upon such authorities and refused by them. "Under the law and order of commitment the detention of petitioner was lawful only so long as he had not fully and permanently recovered his sanity. When he had fully and permanently recovered he was entitled to his discharge even though the medical superintendent of the asylum and the board of administration had failed or neglected to adjudge him a fit subject to be discharged. . . . Their neglect or refusal to act after such recovery could not make his detention lawful. They were charged by law with keeping him in custody until he was fit to be discharged by reason of having fully recovered from his insanity. They were bound to know when he had recovered and then to release him from custody, and no demand or request is required to be made of them to act in the matter."[5]

In an action to recover damages for the alleged wrongful detention of plaintiff amounting to false imprisonment in a hospital, the Court has stated that "it is not essential to a recovery that the plaintiff should have been physically and forcibly detained by the defendant, but conduct of such character as to make plaintiff in her then condition, believe that if she attempted to leave the hospital she would be forcibly detained, constituted a wrongful detention against her will."[6]

This case is summarized as follows: "Plaintiff testified that she entered defendant's hospital on March 22, 1912, to submit to a comparatively minor operation; that at the time she gave to Dr. Hertel, her surgeon, $30, for which she was given a receipt by defendant; the $30 was to pay for a week's

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5 1917, Sevager vs. Gillham, 278 Ill. 295.

6 1916, Cox vs. Rhodes Ave. Hospital, 198 Ill. App. 82.

accommodation at the hospital; that she was taken to the operating room on the twenty-third, but was not then operated on because it was discovered she had other ailments; that on the twenty-fifth she was informed that she was suffering from a tumor; that on the twenty-seventh she was operated on; that because of the extent of the operation she was compelled to stay at the hospital longer than the time she had paid for; that on April 9th she was informed that she was physically fit to leave the hospital; that about five o'clock p. m. on the same day she was presented, by one of the nurses, with a bill for $82, hospital charges; that her physician also told her that if the bill was not paid she would have trouble with the hospital; that he then handed her a judgment note for $82 which he requested her to sign and which she refused to execute; that at the time the bill was presented, she had but two or three dollars in her possession, and that she informed the nurse that she could not pay her bill because she was unable to get any money until she could go to the bank; that she had arranged for a taxicab to call for her that evening at six o'clock; that she was later informed that the taxicab was there for her and was asked whether she had signed the note and was told that unless it was signed she would not be permitted to leave the hospital; then she requested the chauffeur be sent to her room, but was informed that he would not be allowed to come into the building; that she then went to the window of the building and threw a dime to the chauffeur who was standing outside, to telephone to her sister that she was being detained and could not come home; that at eight o'clock that same evening a lawyer came, at the request of plaintiff's sister, to the hospital; that when he came, he picked up her suitcase and walked out of the room toward the stairs; that they were met by the night nurse, and were told that she had orders from the office not to let her go; that she was, however, permitted to go down stairs so the matter might be discussed at the office; that there again a talk was had with the cashier who demanded that plaintiff either pay the bill or sign a note for the amount; that finally the lawyer stated that she could not be held at the hospital for the payment of that debt, and that she would pay as soon as she was able to do so; that after a little

colloquy the door was unlocked and plaintiff went home. Plaintiff testified that she was in a weak, hysterical condition thereafter; that she required assistance down the stairs to her taxicab; that thereafter she continued to be in a weak and hysterical condition as a result of the acts of the defendant, and that she was not able to do any work for six months after she returned home from the hospital.''[7]

A North Carolina case reviews at length the question of restraint. This was an action to recover damages for unlawful detention in a hospital. ''The plaintiff was a young woman, about to be married, who came to Asheville, N. C., from Savannah, Ga., to rid her system of malaria and for recreation and rest. She was somewhat delicate and nervous, but the evidence is that her mind was perfectly clear. Having heard of the Highland Hospital, operated by Dr. Carroll, as a sanitarium, she entered the institution after visiting it, but it was concealed from her that it was in effect a private asylum.[8]

In brief, the Court made the following findings: Where a patient in a sanitarium, who was not in such a condition that she would be likely to imperil her health or safety, desired to leave, those in charge of the sanitarium cannot lawfully compel her to remain.[8]

A patient by agreeing to abide by the rules of a private hospital and to remain there for a fixed time, does not thereby surrender control of herself.[8]

§ 365. **Duty of Hospital to Insubordinate Patients.** The fact that the head of a private hospital in good faith believed he was entitled to imprison a patient, who desired to leave, was no defense to an action for only compensatory damages.[9]

Should a patient in a private hospital become insane after going there for treatment, it is the duty of those in charge to notify her relatives, and not to imprison the patient.[9]

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7 1916, Cox vs. Rhodes Ave. Hospital, 198 Ill. App. 82.

8 1915, Cook vs. Highland Hospital, 168 N. C. 250, 84 S. E. 352.

9 There was a conflict of evidence as to the treatment that the plaintiff received, "but there is no controversy that the plaintiff was detained in the defendant's hospital against her will; confined for thirty-two days; that she was confined a considerable part of the time in a locked and barred cell; that she was denied all communication with her friends and subjected to having her hair shampooed and to massage of delicate portions of her body and to hypodermic injections daily against her will." 1915, Cook vs. Highland Hospital, 168 N. C. 250, 84 S. E. 352.

Where a patient does not abide by the rules of a private hospital according to agreement, the remedy for those in charge is to discharge her.[10]

"In this land, the law guarantees liberty to every one, subject to restraint only in the modes provided by law, and even then there is the right to review the conduct of the persons in charge of those deprived of their liberty. The plaintiff was not committed to the care of the defendants by any legal proceedings adjudging her insane, and her signing the paper agreeing to be subject to the rules and regulations of the institution was not irrevocable. It did not subject her to the irresponsible power and control of the defendant. This is the whole controversy, and requires no further discussion.[10]

"If the plaintiff did not abide by her agreement to obey the rules and regulations of the institution, the remedy of the defendants was to discharge her, or if her condition forbade this, to notify her relatives (neither of which they did) and not to imprison her and to force her to do their will."[10]

The statute providing for the commitment of inebriates to the State Hospital for the Insane requires that an application "be filed with the Commissioners of Insanity, alleging that the person in whose behalf the application is made is a dipsomaniac or inebriate or a fit subject for treatment in the hospital. There must be a hearing upon the information, and a finding by the Commissioners that the information is true. A commitment without such information and finding is void.[11]

§ 366. **Legal Commitment Expires with Cure.** The dipsomaniac law of Nebraska of 1905 was declared unconstitutional as in violation of the right of personal liberty. The act provided that upon discharge the person sign a pledge agreeing not to indulge in the use of liquor, etc., and to report monthly as to habits. He was to be returned on will of superintendent without recommitment.

"The commitment provides for detention in the hospital until the patient is cured. The general law relating to the control of the hospital provides that any person who is cured shall be discharged by the superintendent. The detention,

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[10] 1915, Cook vs. Highland Hospital, 168 N. C. 250, 84 S. E. 352.

[11] 1906, In re Simmons, 76 Neb. 639, 107 N. W. 863.

therefore, of a person who is cured would be an unlawful restraint, and the patient thus restrained can be released by the ordinary remedies provided by law for such purpose. . . . "[12]

§ 367. **Unlawful Restraint of an Alien.** A seaman was admitted to a hospital through the intervention of the British Consul, to be treated for an injury received on board ship. It was stated that he was not fully cured at the time he applied for his discharge from the hospital, and that, if discharged, he would be likely to become a public charge, and that the master of the vessel had directed that he be detained until he might be returned to the port from which he came. The Court stated that these reasons were insufficient to justify the hospital authorities in restraining petitioner of his liberty. The fact that he had never been admitted to the United States by the immigration authorities, and that under the immigration laws of the United States it was the duty of the master of the vessel to return him to the port from which he came, was not ground for refusing to discharge the petitioner from detention at such hospital.[13]

§ 368. **Contract Against Liberty Unenforceable.** The superintendent of "The New York State Inebriate Asylum" has "power to receive and retain all inebriates who enter said asylum either voluntarily or by order of the Committee,"[14] but was held to have no right to keep a voluntary patient in the institution by force; although such patient on entering the institution signed the requisite agreement under the act to remain there for one year, which time had not expired.[15] No contract which deprives a person of his liberty can be specifically enforced by the judgment or order of a court; and as a general rule force cannot be used to compel any person to perform such contract.

"The power given to 'retain' such patients, in my judgment, only confers the right upon the superintendent of the institution to keep them so long as they will voluntarily remain, and no longer."[15]

§ 369. **State May Not Imprison Without Cause.** A

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12 1906, **In re** Schwarteng, 76 Neb. 773, 108 N. W. 125.

13 1904, **In re** Carlson, 130 Fed. 379.

14 Laws of 1857, p. 431.

15 1865, 29 Howe Pr. (N. Y.) 485.

Wisconsin law of 1887 provided that "any person charged . . . with being an inebriate, habitual or common drunkard, shall be arrested and brought before a judge of a court of record for trial . . . and if convicted . . . shall be sentenced to confinement in an inebriate asylum in this State; . . . provided, that some relative or friend shall execute a bond conditioned that he will pay for the support of such inebriate . . . during his confinement." The law was declared by the Supreme Court of Wisconsin to be in violation of the Constitution.[16]

"The purpose of the act is not to guard merely during disability, or want of self-control, or danger of personal safety but to imprison for a fixed period, without the commission of any penal offense, or any trial in a court of law, merely by reason of the existence of the condition named, and to satisfy the act and the 'relative or friend' who kindly furnished the requisite bond. Besides the act contemplates no restoration, . . . no possibility of reformation within the time thus arbitrarily fixed. Not having been convicted of any offense known to the law, it would seem that he is beyond the reach of executive clemency. . . .

"If the Legislature may then authorize imprisonment for two years, without the commission of any offense made punishable by law, then it may do so for ten or twenty years. It is the question of power merely with which we are concerned. . . . We are forced to conclude that the relator has been deprived of his liberty without due process of law, and denied the equal protection of the law."[17]

Charges of false imprisonment were brought against the superintendent of state insane hospital.[18]

16-17 1888, State vs. Ryan, 70 Wis. 676, 36 N. W. 827.

18 "On the first day of October, 1874, Mrs. Newcomer, the defendant in error, being at the passenger house of the Michigan Central Railroad at Albion, was forcibly taken and put aboard the care of that railroad and removed to the Michigan Asylum for the Insane at Kalamazoo, where she was restrained of her liberty until the fourth day of August following. The persons chiefly instrumental in procuring this confinement were her son-in-law and his mother, with whom she had had difficulty, but her daughter gave assent. The person who accompanied her on the cars to the asylum was one of the superintendents of the poor of Calhoun County, who, it is now conceded, had no legal authority for interference beyond that which might be claimed for any citizen. The reason assigned for removing

§ 370. **Autopsies.** The performance of an unauthorized autopsy relates first to the liability of the officers performing it and to the hospital which affords its facilities.

An autopsy is defined, legally, as an examination of a dead body by dissection or an examination of a dead body by dissection to ascertain the cause of death.[19] Although a dead body in the legal sense is not property as the term is usually used, there is a right to bury the corpse and preserve the remains which will be recognized and protected in the courts. An unauthorized and unlawful mutilation of a corpse before

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Mrs. Newcomer to the asylum was her insanity. There had been no judicial finding of fact, and it is not alleged that there were any such manifestations of mental delusions as indicated danger to others. The plaintiff in error was at the time in charge of the asylum, and he received and detained Mrs. Newcomer in the full belief that she was insane. It was shown in this case that the medical and other assistants of the asylum believed her to be insane while she remained there." 1879, Van Deusen vs. Newcomer, 40 Mich. 90.

In brief, the Court held that one cannot lawfully be placed or detained in an insane asylum against his will, unless actually insane, and the confinement of a person dangerously insane is always justifiable. Officers having quasi judicial powers are not liable for an injury resulting from their acts which are done understandingly and in good faith within the limits of an authority expressly granted to them.

If a patient is so restrained and subjected to compulsory physical treatment when he could have been released without undue danger to himself or the community, he is entitled to damages for false imprisonment in spite of the fact that the hospital or its authorities may have acted entirely in good faith and the patient himself signed and contracted to subject himself to the rules of the institution.

Undue delay in the process of commitment may entitle the patient to a writ of habeas corpus. A patient was committed under the Insanity Law to the Bellevue Hospital as insane, apparently. The hospital authorities made a thorough examination and found him to be sane. The Court points out: "It was the duty of the hospital authorities upon examining Ledwith to discharge him immediately, if they believed him to be sane. It was likewise their duty, if they determined that he was insane, to take the necessary steps provided by other provisions of the Insanity Law to have him committed to the proper institution for the treatment of the mental disorder. . . . No such proceedings were taken. Ledwith was simply held apparently for the balance of the thirty days, although no other examination was necessary." Under the circumstances, the Court decided that he was entitled to a writ of habeas corpus. 1924, People vs. Board of Trustees of Bellevue and Allied Hospitals, 238 N. Y. 403, 144 N. E. 657.

A person who enters a hospital cannot be operated upon without his consent. 1911, Darcy vs. Presbyterian Hospital, 202 N. Y. 259.

On the other hand, discharge by the hospital before the condition of the patient warrants such discharge may be remiss, but no blame can be attached to those mistaken in their judgment. 1907, Phillips vs. Railroad, 211 Mo. 419; also 1921, Karabalis vs. E. I. DuPont de Nemours, 129 Va. 151, 105 S. E. 755.

[19] 6 C. J. 867.

burial gives rise to an action for damages in favor of the surviving husband or wife, or next of kin.[1] A physician, however, who performs an autopsy upon a dead body with ordinary care and skill, under the authority of the coroner or of a city ordinance, is not liable in an action to the family of the deceased for the mutilation of the body without their consent.[2]

The coroner, of course, may order an autopsy if in his judgment it is the proper method of ascertaining the cause of a person's death, this without the consent of the family.[3] It is obvious, then, that in order to be legal, the autopsy must be either authorized by the coroner acting in his official capacity with or without the consent of the family, or it must be done with the consent of the family.

Special provision is made in Connecticut concerning the performance of autopsies.

"The official having charge of any hospital or public institution, immediately upon the death of any inmate thereof, shall notify the relatives of the deceased, if known, of such death; otherwise such notice shall be given to the person or persons bringing or committing such person to such institution."[4]

§ 371. **Disposition of Corpses.** By statute it may be provided that bodies to be buried at public expense, be surrendered to either the State Board of Health, or to medical colleges.

§ 375. **California.** Any sheriff, coroner, keeper of a county poorhouse, or public hospital must surrender the dead bodies of such persons as are required to be buried at public expense to any physician or surgeon . . . to be by him used for the advancement of anatomical science, preference always being given to medical and osteopathic schools, by law established in this State, for their use in the instruction of students. But if such deceased person requested to be buried, or if within twenty-four hours after his death some person claiming to be kindred or a friend of the deceased requires the body to be buried, or if such deceased person was a

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1 13 Cyc. 281.

2 1895, Young vs. Physicians' College, 81 Md. 358, 32 Atl. 177.

3 9 Cyc. 989.

4 Connecticut G. S. Rev. 1918, Title 12, C. 96, p. 597, Sec. 187.

traveler who suddenly died before making himself known, such dead body must be buried without dissection.[5]

§ 376. **Colorado.** Any member of the board of health of any city, village, or township in the State, mayor or common council of any city, and the officers or board having direction or control of any almshouse, prison, hospital . . . in the State shall, when so requested, surrender the dead bodies of such persons as may be required to be buried at public expense, to any licensed physician in the State, to be used by him for the advancement of anatomical science, preference being given to the faculty of legally organized medical colleges . . . provided that in no case shall the faculties or officers be entitled to require or receive . . . any money in excess of the actual cost of procuring the same.[6]

§ 377. **Connecticut.** Bodies required to be buried at public expense if unclaimed are to be delivered to the department of medicine of Yale University by the first selectmen of any town, the mayor of any city, the coroner or jailer of any county, the master of any workhouse, superintendent or person in charge of any almshouse, asylum, hospital, morgue or other public institution which is supported in whole or in part at public expense.[7]

It further requires that the first selectman of any town . . . or person in charge of any almshouse, asylum, hospital, morgue, or other institution supported in whole or in part at public expense having in his . . . control the dead body of any person which would have to be buried at public expense, give notice thereof to the department of medicine of Yale University, and upon expiration of twenty-four hours after death . . . may deliver said body to said department in such manner as it shall direct, and at its expense, . . . provided such bodies shall not have been claimed by any relative . . . or legal representative . . . within the . . . period. . . . Burial or transfer permit is to be secured from the registrar of the town.[8]

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[5] California, Deering Pol. Code 1915, C. IV, Sec. 3094. Amendment approved 1907, Statutes 1907, p. 835.

[6] Colorado R. S. 1912, C. 44, p. 969, 2217.

[7] Conn. P. A. 1919, C. 92, p. 2742.

[8] Conn. Public Acts 1918, Sp. 1919, C. 92, p. 2742, Sec. 2714.

§ 380. **Georgia.** All public officers and their assistants . . . of every . . . public hospital in this State, having control over any dead human body, not dead from any contagious or infectious disease, and required to be buried at public expense, are required to notify the Board of Distribution of Bodies . . . to remove all such bodies, to be used only within this State, solely for the advancement of medical science; provided, if any person . . . shall claim body or bodies for burial it shall be surrendered or buried at public expense if he is financially unable to supply burial.[9]

It also states that all public officers of the State of Georgia and their assistants, and all officers and other deputies of every county, city, town, and other municipality, and of every prison, chain-gang, morgue, public hospital, or sanitarium in this State (except the Georgia State Sanitarium . . . which institution shall have authority to perform autopsies on dead bodies of persons dying as patients in said institution, all in discretion of the superintendent and medical staff of said institution) having control over any dead human body, not dead from contagious or infectious disease, and required to be buried at public expense, are required to notify the Board of Distribution . . . or its duly authorized officer, whenever any such bodies come into their possession or control, and shall without fee or reward deliver such bodies and suffer the Board and its duly authorized agents . . . to remove all such bodies, to be used only within this State solely for the advancement of medical science, provided that no such notice shall be given . . . if body claimed for burial by kin or one related by marriage, socially or otherwise connected with and interested in the deceased or shall be buried at public expense provided he or she is unable financially to supply burial.[10]

§ 385. **Kansas.** In the event of a sudden, unexpected, or mysterious death of an inmate of any public or private hospital or asylum for the insane, notice is to be given coroner, and an inquest held.[11]

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[9] Georgia Code 1914, Vol. 1, Political Title 12, C. 15, 1756, p. 752.

[10] Georgia Laws 1920, No. 796, p. 130. Amending Laws 1918, p. 114.

[11] Kansas J. S. 1915, C. 108, Art. 2, p. 1963, 9620.

§ 393. **Mississippi.** The authorities in charge of the hospitals supported in whole, or in part, by the State, are authorized and directed, upon request of the Secretary of the State Board of Health, to deliver to the duly authorized representatives of the State University, or to any medical college . . . for anatomical uses, any dead body of any person dying in any of the hospitals when the body is not claimed for burial within a reasonable time after death . . . the dead body of any unknown person who is a traveler, dying suddenly, shall not be so delivered.[12]

§ 407. **Pennsylvania.** All public officers, agents, and servants . . . of any and every almshouse . . . hospital, or other municipality, or other public institution having control over dead human bodies, required to be buried at the public expense, are required to notify the Board of Distribution . . . and . . . deliver such body or bodies . . . to physicians and surgeons from time to time designated by them. . . . The body is not to be delivered if claimed by kindred within a reasonable time (forty-eight hours after death).[13]

§ 417. **West Virginia.** All dead human bodies which may come under the charge or control of any superintendent or officer or agent having the supervision of any almshouse, . . . hospital, asylum, or other public institution, in the State or in any county, district, or municipality therein, and which may be required to be buried at public expense, shall be subject to the requisition of the Anatomical Board, except when a claim is made by a relative or friend. The superintendent is to give notice to the Anatomical Board of dead bodies awaiting disposition, and they are to be delivered to the Board or its authorized agent.[14]

§ 420. **Defrauding the Hospital.** Some of the states have by general statute prohibited any person from ordering, receiving, or using at any hospital, food or accommodation with the intent of defrauding the owner. In Connecticut the failure to pay any such bill on demand is made prima facie proof of the intent to defraud.[15] Maryland punishes the

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[12] Miss. Code 1917, C. 185, University of Mississippi, p. 3148, 7936.

[13] Penna. Laws 1915, amending Sec. 2, act of June 13, 1883, Sec. 2.

[14] West Virginia Code 1906, C. 45, p. 749, Sec. 1726.

[15] Laws 1921, C. 82.

offense upon conviction by fine and imprisonment,[16] as does Ohio[17] and South Carolina.[18]

New Jersey declares that any one who obtains free or at greatly reduced rates, care or treatment, medicines, or surgical, or dental treatment from any hospital, sanitarium, clinic, or dispensary, either public or private, upon the false representation of his or her ability to make payment therefor, is a disorderly person whose offense may be punished by fine and imprisonment.[19]

§ 421. **Commission to Physicians Unlawful.** In Kansas it is unlawful for any person, firm, or corporation, owning, operating, or controlling any hospital in the State, to pay directly or indirectly to any physician or surgeon any commission or consideration of any kind whatever for advising any patient to go to such hospital for treatment or operation or for bringing any patient to such hospital for such purpose.[20]

§ 422. **Workmen's Compensation Laws.** With the development of workmen's compensation laws we find that there is a provision relating to the type and extent of medical and hospital care introduced. These provisions vary and under circumstances the time for such care may be extended at the discretion of the Industrial Commission. Frequently the Commission establishes a schedule fixing fees for which medical, surgical, and hospital service is to be compensated.

In Colorado, every employer, regardless of his method of insurance, is to furnish such medical, surgical, nursing, and hospital treatment, medical, hospital, and surgical supplies, crutches, and apparatus, as may reasonably be needed at the time of the injury and thereafter during the disability, but not exceeding sixty days from the date of accident, and $200 in value and care, . . . provided, however, that every employer must insure his liability for the expenses provided for, unless permission is given by the Industrial Commission to such employer to operate under a medical plan as hereinafter set forth.

Every plan . . . for furnishing medical, surgical, and hospital treatment, whether the employee is to pay any

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16 Laws 1918, C. 279, p. 663.
17 G. C. 1912, Sec. 1313.
18 Acts 1916, No. 91, Sec. 300.
19 Laws 1918, C. 116, p. 260.
20 G. S. 1915, Sec. 3810.

part of the expense of such treatment or not, shall, before being put into effect, receive the approval of the Industrial Commission, except "no plan shall be approved . . . which relieves the employer from the burden of assuming and paying for any part of the medical, surgical, and hospital services and supplies hereinabove required."[1]

Oklahoma requires the employer to provide promptly for an injured employee supplying the hospital service . . . necessary during sixty days of the injury or such time in excess thereof as in the judgment of the Commissioner may be required, the amount not to exceed $100.[2]

Many of the companies either establish their own hospitals or contract with various institutions to receive and care for injured employees. Some of the states require that if hospital fees are collected, that hospital facilities must be provided as in Arkansas, where it is required that every railroad company or corporation operating railroads in the State, "who have heretofore collected or received hospital fees from their employees, or who may hereafter collect or receive such hospital fees from such employees, shall provide hospital facilities in the State of such capacity and equipment as will be sufficient for the care, needs, and accommodation of their sick or injured employees, residents of the State. Any such employees injured while in the service of any such railroad, shall not be taken or sent out of the State for treatment."[3]

California requires employers who provide hospital service for their employees and who make a charge therefor, to keep books, records, and accounts of all such charges, and to make an annual written report thereof; requiring each such charge to be just and reasonable, and to be devoted to no other purpose than such hospital service, and prescribing patients.[4]

Every hospital charge demanded, collected, or recovered by an employer shall be just and reasonable. The Railroad Commission is given authority to decide what is an unreason-

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1 Colorado S. L. 1919, C. 219, p. 719, Sec. 51.

2 Oklahoma Laws, 1919, C. 14, p. 17.

3 Supplement to Kerby's Digest. Castle 1911, Sec. 6645 A.

4 California Deering Consolidated Supplement 1917-1919, p. 1440, Act 2, 144 G.

able charge in all cases where such choice is made by a hospital maintained by a common carrier by rail, and in all cases where the charge is made by a hospital maintained by other than a common carrier by rail, the Industrial Accident Commission is hereby given authority to decide what is an unreasonable charge.

Nevada makes it "unlawful for any person . . . corporation . . . to collect, demand . . . either monthly, annually, or for any other period of time, any sum of money for hospital fees from any person or laborer at any place in the State where no convenient, comfortable, and well-equipped hospital is maintained at some town or place for the accommodation, relief, and treatment of persons in his or their employ . . . provided that employees may be cared for at any private or public hospital or sanitarium, or other convenient and comfortable place, without expense to the person or patient from whom hospital fees are collected, . . ." and it is further provided, "that if at the nearest hospital the proper medical treatment cannot be secured, then it shall not be a misdemeanor to take a person or patient a greater distance or to another hospital."[5]

In Oregon it is lawful for employers to collect or deduct a portion of the wages of their employees for medical, surgical, or hospital care, and for attention in such an amount and in such manner as may be reasonable.[6]

Pennsylvania enacts that it shall be the duty of every corporation, manufacturing establishment, or colliery, to retain from and out of the wages or earnings of any person by them employed, on his written order, any contribution or voluntary subscription by such person, made in monthly or other payments, for the support of any hospital or other charitable institution, and the sum so retained to pay over upon demand to such hospital or other charitable institution; . . . : Provided, that the hospital or charitable institution claiming the same shall give notice in writing . . . of the names of persons by them employed who have subscribed to the support of such hospital, the amount subscribed, when and how often payable, . . . and file such sub-

[5] Nevada Rev. Laws 1912, p. 559, Sec. 1943.

[6] Oregon Laws 1917, C. 393.

scription with said corporation, manufacturing establishment, or colliery.[7]

The following cases have arisen over contracts for medical or hospital treatment. In an action by a hospital to recover its charges for the care of defendant's minor employee, not based on the Workmen's Compensation Act, it was held that the plaintiff must show by a fair preponderance of the evidence an express or implied contract that defendant would pay such fees. Promises by employers to pay the hospital fees of an employee for which they are not primarily liable, made after the services were rendered, are not binding on them in favor of the hospital, and a request by employers that a hospital receive and care for an employee does not bind the employers to pay the fees for such care, where they are not primarily liable therefor.[8]

Benefits received by a patient from hospital treatment do not establish the legal duty of paying therefor. Where one knowingly accepts board and treatment from a hospital, burdensome to it, if not beneficial to him, for which it expects payment, a promise may be found on the patient's part to make such payment.[9]

If a hospital patient accepted board and treatment, understanding that in no event was he to be liable therefor, but that his employer would pay, his neglect or intentional concealment of such understanding, is evidence on which to base a finding of estoppel to deny his promise to pay, inferred from circumstances. Where a hospital patient, injured by the negligence of his employer, told the hospital that his employer would pay the hospital bill, the question of whether plaintiffs, by acquiescing in such statement, were estopped to claim compensation from the patient himself was for the jury.[10]

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7 Penna. Stats. 1920 (West), p. 2089, Wages, Sec. 2, 1513.

8 1916, Homeopathic Hospital of Albany vs. Chalmers, 157 N. J. S. 1000, 94 Misc. Rep. 600.

9 1918, Elliot Hospital vs. Turcotte, 79 N. H. 110, 105 Atl. 361.

10 In an action brought against the defendant, for board, nursing, and lodging, and for the use of its operating rooms, furnished at the alleged instance and request, and upon the credit and account, of the defendant, for treatment of his employee. An amendment was made to the answer the defendant sought to set up that the contract included the furnishing by the plaintiff of proper and skillful attention, treatment, and nursing, that the plaintiff had failed to comply with

Under the Workmen's Compensation Law of New York, the duty to furnish necessary medical services to an injured employee falls primarily on the employer, and if he refuses the employee's request for such aid, or neglects to furnish proper service, the employee may select his own physician.[11]

In view of the Workmen's Compensation Law, where a physician's claim for services rendered employees is based solely on an agreement with the employer, and is not a part of the injured employee's claim for compensation, the Compensation Commission is without legal authority to fix his fee and enforce it, and the physician still retains his right to prosecute his claim against the employer in a common-law action.

Where the agreement between defendant hospital association and plaintiff's employer, set out in the complaint, provides that defendant shall provide for employee's treatment by any of the physicians employed by defendant in their respective localities and all necessary hospital service at adequate and well appointed hospitals, and the contract introduced in evidence contains the same provisions, though the former contract has several unfilled blanks, which are filled in the latter, the variance, not pointed out during the trial, is immaterial after the trial.

In an action against a hospital association for breach of a contract with plaintiff's employer to furnish hospital service, the evidence was held to present questions for the jury whether plaintiff received defendant's permission to change to a hospital at Portland, at which he claims to have been refused service, and whether he was still entitled to be received into a hospital at all.[12]

The employer or association is not liable for the negligence of hospital employees in the care and treatment of patients of the company sent thereto.

Where employees of a railway company formed a beneficial association, which built and equipped hospitals, the

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such agreement, and that the treatment furnished by the physicians in charge was unskilful and injurious to the patient, and there was a failure of consideration. It was held that it was error to strike so much of the amendment as set up such defense. 1910, Wilson vs. Parkview Sanitarium, 135 Ga. 471, 69 S. E. 741.

11 1921, Feldstein vs. Buick Motor Co., 18 N. Y. S. 417.

12 1914, Blake vs. National Hospital Association, 70 Ore. 264, 141 Pac. 158.

administration of which was in the hands of persons elected by the employees, a small percentage of each employee's salary being collected by the railway company and turned over to the association, the association was not the railway company's agent in treating members, and the company was not liable for negligence in such treatment, although it contributed $50,000 a year toward the support of the hospitals, and its treasurer and comptroller were required to be the treasurer and comptroller of the association, and persons not members, injured on the road, were sometimes treated at the hospitals at the company's expense.[13]

. . . In an action[14] for damages on account of the negligent and unskilful surgical treatment, the court held there was sufficient evidence to show negligence on the part of the surgeon, when it appears that the patient's hip was dislocated and his femur bone fractured about eight inches below the hip; that the head of the femur had been torn from its socket and pushed upwards and backwards, producing a lump on the hip which was easily discernible; that the surgeons' attention was called to the painful condition of the hip, but that he never examined it, claiming that pain was caused by the broken bone; and that the surgical treatment was directed solely to the fracture of the femur, which under the appliances used, properly healed.

Where a hospital is maintained and a physician employed by a corporation for the purpose of caring for sick and injured employees, the expenses being provided for out of certain moneys retained from the monthly wages of the employees, and the corporation makes no profit out of the undertaking, but conducts it as a charitable institution, it is not liable for malpractice or negligence on the part of the physician, but is responsible only for want of ordinary care in selecting him.

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[13] A conductor for the Northern Pacific Railway Company brought action against the Railway Company to recover for personal injuries alleged to have been suffered by reason of an operation for appendicitis performed by the chief surgeon of the Tacoma Hospital of the Northern Pacific Beneficial Association. When he became sick, Carr went voluntarily to the hospital of the Northern Pacific Beneficial Association. The result of the operation was unsatisfactory, and he charged that the defendant who operated was negligent, and the attendants furnished by the defendant were negligent in not doing certain things they should have done. 1921, Carr vs. Northern Pac. Ry. Co., 273 Fed. 511.

[14] 1895, Richardson vs. Carbon Hill Coal Co., 10 Wash. 651.

In view of the Workmen's Compensation Act, providing that the employer shall furnish hospital services during the first fourteen days after disability, a coal company, which knowingly permitted employees to be moved to a hospital without objection, "adopted this method of performing its statutory duty, and at once there arose an implied obligation on its part to pay plaintiff for such service."[15]

The Workmen's Compensation Act is a general law applicable throughout the State, and makes no attempt to exempt from liability a class of employees of a particular district and impose upon the State the burdens they would thus escape.

A corporation is responsible for the acts of its agents performed while engaged in the discharge of duties within the general scope of his agency, although the particular act was willful, and not directly authorized. "A corporation intrusting a general duty to an agent is liable to an injured person for damages following from the agent's wrongful act, done in the course of his general authority, although in doing the particular act, the agent may have failed in his duty to his principal, and disobeyed his instructions."[16]

"A railroad company is under no legal obligation to provide surgical aid for its injured employees. If it does so voluntarily and gratuitously, its liability cannot be extended beyond its negligence, if any, in the selection of a surgeon.

"A railroad, voluntarily assuming to employ medical aid for its injured employees, is bound only to exercise reasonable care and diligence to employ a competent physician or surgeon, but is not required to select one of the highest skill or longest experience. If it exercises this required care and dilignce, its duty terminates; and it is not liable for the subsequent malpractice or wrongs of such physician or surgeon, committed in or about the treatment of the servant."[17]

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15 1920, Trustees of State Hospital of Middle Coal Field of Pennsylvania vs. Lehigh Valley Coal Co., 267 Penna. 474, 110 Atl. 255.

16 1895, Pittsburgh C. C. and St. L. R. Co. vs. Sullivan, 141 Ind. 83.

17 Ralph H. Pierce, the plaintiff's intestate, on the fifteenth day of January, 1891, left the defendant's hospital at Ogden, Utah, and nothing was known of or could be ascertained about him until some few weeks afterwards, when his body was found in the Weber River. The distinct charge

The relation of a doctor to a coal company employing him, with money deducted from wages of the employees for a doctor, to attend its employees when sick, relative to liability of the company for any negligent failure of the doctor to attend a sick employee, is not that of an agent, nor of a servant, but of an independent contractor; for whose neglect, however, the company is liable, if it was under a contractual obligation to the employee, not merely to employ a competent doctor, but to furnish the employee medical treatment in case of sickness.[18]

A coal company which makes regular deductions from wages of employees for a doctor, and employs a competent doctor to attend them, is not liable for failure of the doctor, of which it had no notice, to attend one of its employees when sick and requesting his attendance. There was no evidence that it made or expected to make a profit on the transaction, or that it undertook to furnish competent medical attention to its employees, rather than merely to provide a competent doctor whose services would be available to them, without additional charge. ". . . Relative to the duty of a doctor employed by a company for its employees to attend, on call, a pneumonia patient several miles away, when he had in camp where he was, five or six cases of pneumonia and several hundred of 'influenza,' it cannot be said, as a matter of law, that his duty to him was paramount to other patients, also ill, unless they were in equal danger; but what he ought to have done in the circumstances is largely dependent on his good-faith judgment at the time.

"There can be no recovery for the physical pain and mental suffering of decedent; the right of action for death from wrongful or negligent act being a new and original one given decedent's relatives, and not a mere survival of his cause of action. . . ."

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of negligence was made against the defendant, . . . "that defendant, through its agents, servants, and employees, and those in charge and control of its hospital at Ogden, permitted said Ralph H. Pierce, while temporarily insane, to wander away from its said hospital, and that, while thus mentally unsound, he fell into the Weber River, and was drowned." 1895, Pierce vs. Union Pacific R. Co., 66 Fed. Rep. 44; 1894, Union Pacific Ry. Co. vs. Artist, 60 Fed. 365 followed, no opinion.

18 1920, Virginia Iron, Coal, and Coke Company vs. Adle's Adm'r., 128 Va. 280, 105 S. E. 107.

. . . A declaration in an action for a servant's death, alleging that defendant employer undertook to furnish hospital and medical attention, and breached that duty by turning the servant out of the hospital too soon and leaving him without attention, was held to state a cause of action, defendant being under duty to use some degree of care in discharging the voluntary undertaking.[19]

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19 1921, Karabalis vs. E. I. DuPont de Nemours and Co., 129 Va. 151, 105 S. E. 755.

CHAPTER XI

CHARITABLE TRUSTS

§ 430. **Definition of Trust.** The term trust is used in various ways but technically it "is a confidence reposed in one person, who is termed trustee, for the benefit of another, who is called the cestui que trust, respecting property which is held by the trustee for the benefit of the cestui que trust. It has also been defined as an obligation on a person to whom the legal title to property has been transferred, arising out of a confidence reposed in him to apply faithfully and according to such confidence."[1]

§ 431. **Definition of Charitable Trust.** Any trust which comes within the definition of a legal charity and which is for the benefit of an indefinite class of persons "sufficiently designated to indicate the intention of the donor, and constituting some portion or class of the public, is a charitable trust." It has been said that in a sense, the charitable trust is one "which orignates from the gift, and which limits property to any public use to which it is lawful to devote property forever. The legality of such appropriation may be established by general rules of law, or by special act of the sovereign power. In either case, if the use is public, the trust is a charity. To the creation of a trust it is essential that there be a separation of the legal estate from the beneficial enjoyment, and, therefore, a public trust cannot exist where property is given absolutely to a charitable organization."[2]

The essential idea of a charitable trust is that its benefit is to be for the whole public or some large class of the public, as distinguished from private persons; the fact that the bene-

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1 26 R. C. L. 1168. See also Zollman: Law of Charities, p. 235, et seq.

2 5 R. C. L. 295.

ficiaries must be indefinite also distinguishes such a trust from a private trust.[3]

§ 432. **Law Favorable to Charitable Trusts.** These trusts are highly favored at law and will be upheld under circumstances under which private trusts would fail. A charity has been defined as a gift, "to be applied, consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds and hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life, by erecting or maintaining public buildings or roads, or otherwise lessening the burdens of government. It is immaterial whether the purpose is called charitable in the gift itself, if it is so described as to show that it is charitable in its nature."[4]

Trusts for religious and educational purposes, and for the benefit of the poor, the sick, the afflicted, the helpless, are charitable. "They are governed by the rules that apply to trusts for private benefit. The intention of the donor is ascertained by the application of the same rules of construction. Where, however, it is plain that public charity is intended, different rules from those applied to private trusts may be

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[3] 1915, Johnson vs. Bowen, 85 N. J. Eq. 76, 95 Atl. 370.

To create a trust by his will, the testator must indicate his intention to create the trust, must with a degree of certainty designate the beneficence, and lastly the property out of which the trust is to be taken. Where a bequest in trust is given to the officers of a public or of a private corporation, the officers thereof and their successors are the trustees, not necessarily the corporation. The property must be administered according to the terms of the trust and any abuse thereof will be punished by the courts and the trust protected.

1892, Hayes vs. Pratt, 147 U. S. 557.

Under ordinary circumstances a will may dispose of any property for any object that is not illegal, immoral, or against public policy. The capacity to take the gift after it is made depends on the law of the jurisdiction in which the land is situated.

1919, Sisters of Charity vs. Emery, 144 La. 614, 81 So. 99.

"When the bequest is to an association whose benevolence is restricted to its members only, it is not a public charity (Babb vs. Reed, 5 Rawle (Penna.) 151, 28 Am. Dec. 650), "but if extended to non-members, may be counted as public charity. 1848, Pickering vs. Shotwell, 10 Pa. 23. "A society or association, incorporated or otherwise, cannot change its organic law or prime purpose so as to divert charitable funds to other uses. . . ."

1919, In re Lawson Estate, 264 Penna. 51, 107 Atl. 376.

[4] 1867, Jackson vs. Phillips, 14 Allen (Mass.) 539. See also 1888, Fire Insurance Patrol vs. Boyd, 120 Pa. 645, 15 Atl. 555; 1893, Crerar vs. Williams, 145 Ill. 625, 34 N. E. 467.

invoked in order to give effect to the intention of the donor, and to establish the charity. A public charity will not fail by reason of the fact that the trustee is uncertain, or is incapable of taking, or that the objects of the charity are uncertain and indefinite. These, however, would be fatal to gifts for private benefit."[5] The Court will do everything within its power to discover and carry out the testator's intentions.[6]

Being for objects of permanent interest and benefit to the public, they may be perpetual in their duration, and are not within the rule against perpetuities; "and the instruments creating them should be so construed as to give them effect, if possible, and carry out the general intention of the donor, when clearly manifested, even if the particular form or manner pointed out by him cannot be followed."[7]

It has been said that a thing becomes a charity when the uncertainty of the recipient begins. If the general objects of the bequests are pointed out, "or if the testator has fixed a means of doing so by the appointment of trustees with that power invested in them, then the gift must be treated as sufficiently definite for judicial cognizance, and will be carried into effect."[8]

Where a bequest in a will is specifically stated to be for the benefit of the poor as a class, and the fund is definitely described, and the trustee appointed, and the only uncertainty is the selection of the beneficiaries by the trustee from the designated class, there is no uncertainty rendering the gift invalid. The fact that beneficiaries of a charity may be

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5 1875, Doughten vs. Vandever, 5 Del., Ch. 51.

6 1915, Johnson vs. Bowen, 85 N. J. Eq. 76, 95 Atl. 370.

7 1882, Russell vs. Allen, 107 U. S. 163.

8 1886, Howe vs. Wilson, 91 Mo. 51, 60 Am. Rep. 226.

The Supreme Court of Missouri, construing a will which provided a trust "for the purpose of erecting and maintaining a hospital for sick and injured persons," said: "It must be taken as settled that public charities for the relief of persons who are made objects of the charity for reasons other than their poverty will be upheld. . . . Charity, whether public or private, sees the need, or want, or affliction, or suffering, and its first concern is to bring relief. . . . Such a gift and for such a purpose, aside from the aid of the liberal rule of construction applied by the courts in such cases, comes well within the language of this Court in upholding as public charities, 'gifts which are for the amelioration of the conditions of mankind.'"

1911, Buchanan vs. Kennard, 234 Mo. 117, 136 S. W. 415.

selected by the trustees from the whole world and not limited as to locality, does not invalidate the charity.[9]

The beneficiaries in public charities must necessarily be described in general terms. "They are persons in most cases unborn, and particularization is out of question. Classes may be described, running down through all time, but individuals can only be designated as belonging to such classes. Testators, therefore, in their description of parties to be benefited by their public charities, must necessarily be confined to such terms as 'the aged,' 'the indigent,' 'the sick,' 'the lame,' 'the infirm,' 'the destitute,' of a certain class or of a certain territory. These terms have a customary and popular meaning, and the parties to whom they apply are reasonably unmistakable, although the terms be indefinite to a certain extent. . . . The uncertainty that must exist in such cases is reduced to a certainty if a definite class of beneficiaries is described and a mode is provided for the selection of the particular objects of the bounty."[10]

Words sometimes have a meaning, when applied to certain conditions or relations, other than their ordinary meaning, and when so used in wills should be so construed. For example, the term "pauper" has been held to designate "those persons whose support is a burden upon the public treasury," and one may be destitute of the ability to earn a livelihood, and yet not be a pauper, as, where he is cared for by relatives or friends. The term "indigent" is "commonly used to refer to one's financial ability, and ordinarily indicates one who is destitute of means of comfortable subsistence so as to be in want."[11]

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[9] 1903, Grant vs. Saunders, 121 Iowa 80, 95 N. W. 411.

Also a trust fund for a hospital for animals has been held valid. 1921, McCran vs. Kay (N. J. Ch.), 115 Atl. 649.

[10] 1883, Coit vs. Comstock, 51 Conn. 352, 50 Am. Rep. 29.

[11] A testator by his will directed the trustee appointed therein to convey the residue of the estate to the persons then constituting the board of trustees of the General Hospital for the Insane of the State of Connecticut, located at M., in trust to reserve the amount received as a fund for the benefit of the "insane poor" of the State, with the right to expend the annual income for the support of "indigent insane persons," giving preference to any indigent insane persons having legal residence in testator's native town of H. The hospital was created in 1866 (Acts 1866, C. 37) and Acts 1867, C. 102, divided its inmates into two classes, one class consisting of insane paupers, in which case the town of the inmate's legal residence was chargeable with half the cost of support, while the other class consisted of persons

A devise for "the benefit of the poor of E. township, W. County, Pa.," has been sustained as a charitable use[12] as well as a bequest for "poor children."[13]

§ 433. **Municipality as Trustee.** May a municipality receive bequests in trust for certain purposes? Some states expressly authorize such trusts to be assumed by public corporations; others find such authority in the common law.[14]

A municipal corporation, by accepting such trusts, cannot invest itself with any immunity from legislative action. And, therefore, a municipal organization, as the trustee of a charity, cannot set up a vested right to maintain such organization in the form in which it was when the trust was created, and prevent the State from changing it as the public interests may require.[15]

The corporation of the City of Philadelphia has been held to have power, under its charter, to take real and personal estate by deed, and also by devise, and where a corporation has this power, it may also take and hold property in trust in the same manner and to the same extent as a private person. "If the trust be repugnant to, or inconsistent with, the proper purpose for which the corporation was created, it may not be compellable to execute it, but the trust (if otherwise unexceptionable) will not be void, and a court of equity will appoint a new trustee to enforce and perfect the objects of the trust."[16]

A bequest to a corporation, not for its general purposes, but in trust for particular objects within the scope of its corporate duties, is good. Therefore, a bequest to the Mayor

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described as persons in indigent circumstances who had become insane. It was held, that the will was made in contemplation of the statutory division of the inmates into the classes of insane paupers and indigent insane, and the latter class was intended as the beneficiaries of the trust fund. 1911, Weeks vs. Mansfield, 84 Conn. 544, 80 Atl. 784.

12 1895, Trimm vs. Brightman, 168 Pa. St. 395, 31 Atl. 1071.

13 1892, Barkley vs. Donnelly, 112 Mo. 561.

14 "Municipal corporations may hold property for equity to administer and execute the trusts reposed in them." 1892, Barkley vs. Donnelly, 112 Mo. 561.

A municipal corporation may be a trustee under grant or will, for public purposes germane to its objects. 1870, Philadelphia vs. Fox, 64 Pa. St. 182.

15 1870, Philadelphia vs. Fox, 64 Pa. St. 182.

16 1844, Vidal vs. Philadelphia, 2 How. (U. S.) 192.

and Corporation of the City of Philadelphia, in trust to purchase a lot of ground, and erect thereon a hospital for the relief of the indigent blind and lame, and to manage and regulate the institution, etc., is a good and valid bequest to the Mayor, Aldermen, and Citizens of Philadelphia, for the purposes and upon the trusts declared in the will.[17]

". . . the difference attempted here," said the Court, "depends on a supposed want of capacity in the plaintiff to act as trustee for purposes foreign to its incorporation. How far we might be disposed to disregard an objection depending on technical reasons, in consequence of being without the extraordinary powers of a chancellor to prevent a trust from failing for want of a trustee, it is at present unnecessary to say, as one of the very objects of this corporation is precisely that which is indicated by the testator . . . the maintenance and care of its indigent blind and lame. The only thing peculiar to the fund is the direction to apply it, not to the general purposes of the corporation, but to particular objects within the scope of its corporate duties, and for the accomplishment of those objects, it is clear that it has capacity to take and act as a trustee."

On the other hand, it has been held that a corporation owned by the State, and supported by a public tax or from government funds, is not the object of a charitable bequest,[18] "nor would a corporation belonging to a city, nor a corporation owned by private individuals for supplying any article, however necessary, for which supply a compensation was demanded, be the object of a charitable bequest. The Philadelphia Waterworks is simply property belonging to the city and is no more a public charity than a house or street car, or a fire engine owned, controlled, and managed by the city."

A trust held by a public corporation cannot compel public officers to do what they are not authorized to do; therefore, a board cannot appropriate public moneys to the support of a hospital for a particular class of the public, and over which the county has not complete control.[19]

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17 1831, Philadelphia vs. Elliott, 3 Rawle (Pa.) 170.

18 1767, Jones vs. Williams Amb. (Eng. Chancery) 651, quoted in 1875, Doughten vs. Vandever, 5 Del. Chancery 51.

19 The testator did not intend that his bequest should take effect upon an agreement for the maintenance of the hospital binding only the board, as it existed at

Nothing in Mills. Sts., Sec. 791, Rev. St., Sec. 1204, authorizes the board of county commissioners to enter into an engagement binding on the county forever to maintain a hospital for the benefit of a particular class. Each board must in each year determine for itself what appropriation shall be made for public purposes, and levy the taxes necessary to meet them; and no board is competent to determine these matters for its successors or limit their action in the exercise of governmental functions.[19]

§ 434. **Trust to Corporation Not Yet Formed.** A trust given to a corporation yet to be formed is valid, and where incorporation is obtained afterwards, the trust will be upheld.[20]

"This is sufficiently definite and the validity is not impaired by the provision of the will requiring an act of incorporation to be obtained.[1] It has been held also that a charitable gift is valid although the institution was neither established nor incorporated in the lifetime of the donor.[2]

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the time of his death; but that, not only that board but their successors to all time, should maintain the hospital; and that inasmuch as no board of commissioners was competent to bind its successors, the bequest was void, because depending on an impossible condition. 1911, Robbins vs. Bd. Co. Comis. Boulder County, 50 Colo. 610, 115 Pac. 526.

20 "The devise is in trust for the building, endowment, and maintenance of a hospital for females within the City of Savannah, on a permanent basis, into which sick and indigent females are to be admitted and cared for in such manner and on such terms as may be defined and prescribed by certain directors named and their associates, who are to obtain an act of incorporation for the purpose. 1882, Jones vs. Habersham, 107 U. S. 174.

1 1882, Same, 107 U. S. 174.

2 1882, Russel vs. Allen, 107 U. S. 163.

" . . . trusts for public corporation purposes are upheld under circumstances under which private trusts would fail. Being for objects of permanent interest and benefit to the public, they may be perpetual in their duration, and are not within the rule against perpetuities; and the instruments creating them should be so construed as to give them effect if possible, and carry out the general intention of the donor, when clearly manifested, even if the particular form or manner pointed out by him cannot be followed. They may, and indeed must, be for the benefit of an indefinite number of persons; for if all the beneficiaries are personally designated, the trust lacks the essential element of indefiniteness, which is one characteristic of a legal charity. If the founder describes the general nature of the charitable trust, he may leave the details of its administration to be settled by trustees under the superintendence of a court of chancery; and an omission to name trustees, or the death or declination of the trustees named, will not defeat the trust, but the Court will appoint new trustees in their stead." 1882, Same, 107 U. S. 163.

A bequest was made to a hospital for foundlings contingent upon a congressional act of incorporation. The Washington Hospital for Foundlings was incorporated by an act of Congress, approved April 22, 1870 (16 Stat. 92); and, on the 4th day of April, 1872, the trustees under the will conveyed the lots to the corporation in fee. The Court held, 1. That the devise was not invalid for uncertainty, or because it created a perpetuity. 2. That the provision touching a conveyance by the trustees whenever Congress should create a corporation for foundlings which they approved was only a conditional limitation of the estate vested in them. 3. That the duty with which they were charged was an executory trust, and their conveyance was necessary to and did pass the title. . . .

"The objection of uncertainty in this case as to the particular foundlings to be received is without force. The endowments of hospitals for the afflicted and destitute of particular classes, or without any specification of class, is one of the commonest forms of such uses. The hospital being incorporated, nothing beyond its designation as the donee is necessary. Who shall be received, with all other details of management, may well be committed to those to whom its administration is intrusted.[3]

A testator bequeathed the residue of his estate to nine trustees, for the establishment of a hospital for the reception and relief of sick and diseased persons, and directed them to apply to the Legislature for a charter to incorporate the same, and in case the Legislature should refuse to grant this within two years next after this death, provided the two lives named in his will should not continue so long, then the trustees were to pay over the same to the United States. The Court held that the provisions did not violate the statute of perpetuities, but that the corporation could take only in case the charter was granted within the two lives named.[4]

§ 435. **Violation of Charter in Receiving Bequest.** Whether a corporation violates its charter in receiving a

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3 1877, Ould vs. Washington Hospital for Foundlings, 95 U. S. 303.

4 1871, Burrill vs. Boardman, 43 N. Y. 254, 3 Am. Rep. 694; Zollman, p. 378.

bequest must be determined at the instance of the proper public authorities. The Maine Eye and Ear Infirmary, a charitable association, was organized under a general statute which allowed it to take and hold, by purchase, gift, devise, or bequest, personal or real estate in all not exceeding $100,000 in value owned at any one time. It was found already to have that full amount of property as capital, and, if it received additional personal and real estate bequeathed and devised to it in trust for charitable purposes, it would then possess the property in excess of the amount authorized by its act of organization. The Court held that the will was valid on its face; that the limitation, in the charter of the corporation, of the amount of property it may hold, was mainly intended as a regulative and directory provision, and is only impliedly, and not expressly, prohibitory, no penalties being attached thereto. The charter is a contract, a compact between the corporation and the State, the limitation being for the benefit of the general public represented by the State, and not for the heirs of the testator or any particular persons. Any transgression of the compact by the corporation in accepting excessive devises or bequests is an offense only against the State. The contested devises and bequests are voidable only, and not void, and must be treated as valid until declared void. Whether they are to be declared void or be permitted to remain as valid is a question of policy or expediency, which the State must determine for itself—a governmental, and not a judicial question. Such a question can only be determined in a direct proceeding originated by the State through its representative officers, and not by any collateral proceeding brought by or for the benefit of any individuals to set such provisions aside. The State has not hitherto, in the present condition of its charitable institutions, felt any motive to enforce strict exactions upon them, nor has the Legislature yet seen cause for placing restraint upon the power of testators to bequeath property to such institutions, a step easily taken when deemed necessary or wise to do so.[5]

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5 "No wrongful act by a corporation renders its charter void, or creates any forfeiture, without proceedings by which such forfeiture shall be established. A cause for forfeiture is not itself a forfeiture. . . . From the foregoing propositions it is clearly deducible that bequests like the present are voidable only, and

§ 436. **Contract by Ordinance Binding.** Public authorities may not violate a contract made by ordinance in accepting private gifts for certain purposes. A hospital was erected by a city on land of its own, with funds given partly by individuals and accepted on a condition embodied in a contract contained in an ordinance, that the hospital should be maintained by the city for contagious diseases. This established a trust, which in the absence of any law preventing the city taking and holding property in trust for such a purpose, it must carry out, at least so long as the building is adequate, so that it may not use it in part, or part of the time, for other purposes, as this would be a diversion.[6]

§ 437. **Testamentary Trust Not Void When It Cannot be Carried Out Literally.** A testamentary trust created for the erection and maintenance of a hospital for the care of the poor as a memorial for the testator did not fail merely because the estate was not as big as had been supposed by the testator, and was not sufficient for erection and maintenance of as costly a hospital as the testator had contemplated, where it was sufficient for the erection and maintenance of a hospital on a smaller scale for the care of the poor.[7]

A devise in trust to establish free beds at the Middletown Hospital for the Insane for female patients, the income in each year to be used under the direction of the trustees.

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may be avoided by the State alone, and are in no sense to be regarded as void . . . that policy belongs to the State, and not to the Court, and is an executive and not a judicial right, for the Court would decide the question in the case for all cases and all time, while the State may decide the question differently at different times, according to its discretion and the public good. This right the State has never surrendered, and the Court cannot take it from the State. But it would surely deprive the State of its privilege if the Court fails to act upon these bequests as valid bequests, until, in proper and independent proceedings, such bequests are declared to be void." 1897, Farrington vs. Putnam, 90 Me. 405, 37 Atl. 652.

6 1920, Woman's Hospital League vs. City of Paducah, 188 Ky. 604, 223 S. W. 159.

A testamentary trust created for the erection and maintenance of a hospital for the poor in a certain city was not defeated by the fact that at the time of the execution of the will there were no hospitals in such city and the existence of two such hospitals at the time the trust was sought to be enforced. 1921, Jones' Unknown Heirs vs. Dorchester (Tex.), 224 S. W. 595.

7 1921, Jones' Unknown Heirs vs. Dorchester (Tex.), 224 S. W. 595. See also 1922, McCarrol vs. Grand Lodge I. O. O. F., 154 Ark. 376, 243 S. W. 870. 1924, In re Hunter's Estate (Penna.), 123 Atl. 865.

creates a valid trust. It is the trustee's duty to apply the income to the support in such hospital of such female patients as he may designate. If at any time he is unable to make arrangements with the hospital, to use it for the benefit of insane females possessing the requisites to entitle them to admission, it should be administered in a way as nearly as practicable to the manner indicated by testatrix.[8]

A trust was enacted in favor of a particular sanatorium association, which was to receive an income under certain conditions. The association transferred the sanatorium to the State, but by declaration of the trust was not authorized to assign its interest in the trust.[9]

§ 438. **Bequest to Two Institutions.** Where two institutions are the recipients of a trust for joint work, each may enforce the trust against the other.[10] "In order to successfully conduct a medical school, it is necessary that the school have hospital facilities for affording its students opportunities to observe the actual treatment of patients under the care of skilled physicians. The appellant with this end in view, made the conveyance in question to the appellee. . . . The conveyance was in no sense one made for a charitable purpose, but, on the other hand, was one made solely for the purpose of better enabling the appellant to carry out its corporate purposes, and as such did not give rise to a charitable trust between the two institutions.

The provisions in the deed were conditions subsequent and not covenants because providing for a forfeiture. This property if misused or misapplied does not revert to the heir or legal representative of the donor, unless this is the express condition of the gift, and the provision that the staff of the hospital was to be selected from the faculty of the grantor

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8 1894, Hayden vs. Connecticut Hospital for the Insane, 64 Conn. 324, 30 Atl. 50.

9 1920, Bancroft vs. Maine Sanatorium Assn., 119 Me. 56, 109 Atl. 585.

A will, directing that after the death of the testator's mother and the payment of legacies, etc., the residue be converted by the trustee, who should pay to a city a certain sum . . . and to allow to any one suffering from cancer in its probably curable state not over $50, for obtaining treatment, has been held not ambiguous. 1920, Treadwell vs. Beebe, 107 Kan. 31, 190 Pac. 768.

10 1919, Northwestern University vs. Wesley Memorial Hospital, 290 Ill. 205, 125 N. E. 13.

means "all persons who should be selected as members of the staff."[11]

"The gift which was made in the expectation that appellee would furnish facilities for bedside and clinic teaching for the students of appellant's medical school, so long as desired, and the latter gift being made without any condition of reverter, created a continuing obligation which a court of equity has jurisdiction to enforce."[12]

§ 439. **Right of Medical School to Maintain Hospital.** In a Louisiana case the right of a university to maintain clinics and hospitals within its corporate powers was discussed. In this case the plaintiff's third and last ground is that the objects and purposes of the bequest are ultra vires of the university and its board of administrators, in that the university has no authority to establish and maintain a clinic and a hospital.[13]

"This contention," declared the Court, "is without foundation, for two reasons: (a) Because the provision regarding the use of any part of the fund for a clinic and a hospital forms no part of the dispositive portion of the testament, and whether considered as merely advisory or imposing a condition upon the bequest cannot affect its validity. If merely advisory, it may be disregarded; if imposing a condition, the condition will be carried out if legal, and, if illegal, will be treated as an impossible condition and as such null and void. . . . (b) Because the establishment and maintenance of a hospital is not ultra vires of the university and of its board of administrators. . . ."[13]

§ 440. **Property Purchased With Trust Funds.** Property purchased with funds donated for public charity is impressed with the trust character of the funds with which it was purchased, and neither the property itself nor the income derived from its use can be diverted to private profit.[14]

The trustee of real estate purchased with funds donated

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11 1919, Same, 125 N. E. 13.

12 1919, Same, 125 N. E. 13.

13-14 1904, Hutchinson's Succession, 112 La. 656, 36 So. 639.

A hospital for the sick is shown to be not only closely allied to a medical school, but absolutely indispensable to it. 1899, In re Mass. Gen. Hosp. (C. C.), 95 Fed. 973; Same, 100 Fed. 932. 1893, Ex parte Whitewell (Cal.), 98 Cal. 73, 32 Pac. 871, etc.

for a specific public charity cannot lawfully use the property so purchased for purposes other than the administration of the trust imposed by the donors of the fund. And further, where funds are donated for the purpose of establishing and operating a public charity hospital, and the trustee of such funds purchases property therewith and uses the same for the purpose of a hospital, such hospital must be conducted as a public charitable hospital.[15]

"It is shown by the articles of incorporation, and conceded . . . that the Physicians' Hospital Association was organized as a corporation not for profit, under the general corporation laws of this State. Neither the articles of incorporation nor the constitution adopted by the association show that the purpose of the organization is a public charity. The written by-laws were not admitted in evidence, but the oral evidence fairly establishes the fact that this hospital is conducted as a public hospital, open at all times to the public, regardless of color, and is at the service of any reputable physician of any school of medicine to the extent of its facilities, without limitation or discrimination as to the individual applicant . . . excepting cases of contagious disease and cases of mental diseases requiring restraint, for the handling of which the hospital has no facilities, maternity cases not of emergency or surgical nature, and cases where it is suspected that the hospital is to be used to cover up criminal practices.[16]

"While it appears from the evidence that the physicians who are members of this corporation receive pay for the treatment of patients who are sent there upon their recommendation, where the patient is able to pay, this cannot affect the character of the institution itself. The hospital purports to furnish only hospital accommodations and not professional treatment by physicians or surgeons. Whatever services are rendered indigent patients without charge is a matter of charity on the part of the physicians, who may or may not be members of the hospital association. Nor does the fact that a public charitable hospital receives pay from a patient for

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15-16 1917, O'Brien vs. Physicians' Hospital Assn., 96 Ohio St. 1, 116 N. E. 975.

lodging and care affect its character as a charitable institution.[17]

"Where private property is temporarily used exclusively for purposes of public charity, it may be withdrawn from such use at any time at the will of the owner, but that cannot be done with the property in question. It was purchased with trust funds donated for the purposes of a public charity hospital, and is impressed with that trust. It cannot be withdrawn from the uses of this trust at the will of the trustee, or of any or all of the donors of the fund. They have no property interest in the fund or the real estate with the fund, and no right whatever in relation thereto, except to compel the administration of the trust in accordance with the terms of the gift. The title to this property is in this corporation only as a trustee for the purposes of this trust, and it cannot divert it to any use other than public charity.[18]

"Every dollar received by this association from patients who are able to pay, or from other sources, immediately becomes impressed with the same trust, and cannot be diverted to private profit. . . . It is true that this corporation is not compelled to use this property for hospital purposes. It may find the property inadequate for its needs, and purchase other property for the purposes, or it may find it unnecessary to occupy the entire property for a hospital, and may sell the same, or rent the whole, or a part thereof, as may in its judgment be for the best interests of the trust; but the funds obtained from the sale or rentals would still be trust funds that could not be diverted to any purposes other than the purposes of the trust, although the property itself would no longer be used exclusively for public charity. If, however, it uses this property exclusively for hospital purposes, then such hospital must be a public charitable hospital, and as such its doors must be open alike to those who are unable to pay, and to those who have the means to contribute further sums to this public charity commensurate in a degree at least with the hospital accommodations they receive.[19]

"The fact that it may receive pay patients without losing its character as a public charitable hospital, does not authorize

17-18-19 1917, O'Brien vs. Physicians' Hospital Assn., 96 Ohio St. 1, 116 N. E. 975, quoting 1911, Taylor Adm'r vs. Protestant Hospital Assn., 85 Ohio St. 90, 96 N. E. 1089.

it to receive pay patients in such numbers as to exhaust its accommodations, so that it cannot receive and extend hospital service to the usual and ordinary number of indigent patients applying for admission under proper rules and regulations of the board of trustees . . . excepting, of course, the cases it has not facilities for handling. . . . The first concern of a public charitable hospital must be for those who are unable to pay. If, after taking care of these, it still has further accommodations, there can be no objection to making use of the same for pay patients in order to increase the fund which may be at its disposal for the benefit of the poor. It may be, however, that it cannot always nicely measure these demands. It is sufficient if it conforms its conduct along the lines of its experience as to the ordinary and usual demand made upon it by charity patients, provided, always, that it act in good faith and consistent with the purposes of its organization.''[20]

If the defendant fails in these particulars, the remedy is not placing the property on the tax duplicate but enforcing a proper administration of the trust, or the revocation of its charter for the abuse of its corporate franchise, and the appointment of another trustee to administer the trust.[20]

§ 441. **Charging of Fees Permitted to Charitable Institutions.** That fees are charged by a university or hospital is not controlling as to its being a charity, for only when such income is devoted to the profit of the founders and not used to carry on the work by adding to the endowment, etc., does it show the institution is a business and not a charity.[1]

''What controls is not the receipt of income but its purpose. Income added to the endowment helps to make it possible for the work to go on. It is only when income may be applied to the profit of the founders that business has a beginning and charity an end. The line of division is the same whether the gift is devoted to education or to the relief of the poor, the halt, and the blind.''[2]

§ 442. **Charitable Trusts Not Void for Indefiniteness.**

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20 1917, O'Brien vs. Physicians' Hospital Assn., 96 Ohio St. 1, 116 N. E. 975.

1-2 1916, Butterworth vs. Keeler, 219 N. Y. 444, 114 N. E. 803 affg. judgment, 154 N. Y. S. 744, 169, App. Div. 136.

Charitable trusts are not allowed to fail because of the failure to designate trustees competent to take the responsibility. The Appellate Division of the Supreme Court has construed the New York law, which declared that no grant or devise to a charitable use shall be void for indefiniteness or uncertainty of the designated beneficiaries, and gives the Supreme Court control over such grants. A bequest of $50,000 to an unincorporated hospital, which was also an unincorporated association for carrying on a general hospital service and treating all in need without distinctions as to race, etc., and free of charge to those unable to pay, and which, under the law of New Jersey, where it was situated, might receive a gift in perpetuity for charitable uses, was held to create a trust for charitable uses which, if no trustee competent to take had been named, would not fail for want of a trustee.[3]

Where a provision in a will applies equally to two or more objects or persons, the declarations of testator at the time of the execution thereof, are admissible to identify the beneficiary intended,[4] and the intention of the testator will be considered.

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3 1914, Ely vs. Ely, 148 N. Y. S. 691, 163 App. Div. 320, and 1916, Ely vs. Magie, 219 N. Y. 112, 113 N. E. 800, affirming Ely vs. Ely.

It is to be assumed that a testator intended to dispose of all his property and in the construction of a will the Court must do everything in its power to discover the testator's intentions, and to see that they are carried out if possible. 1915, Johnson vs. Bowen, 85 N. J. Eq. 76, 95 Atl. 370.

A recent Pennsylvania case states: "It is now settled in Pennsylvania that a bequest for religious or charitable purposes may be lawfully made to an unincorporated society." **In re** Shand's Estate, 118 Atl. 623.

4 1914, National Jewish Sanatorium for Consumptives vs. Coleman, 191 Ala. 150, 67 So. 699.

In this case of the National Jewish Hospital, the testator made a gift to "the Jewish Hospital for Consumptives of Denver." There was at Denver a "National Jewish Hospital for Consumptives" and a "Jewish Consumptive Relief Society" located in the suburb but with its business office in Denver. The National Jewish Hospital was supported chiefly by Jews of the Reformed Faith, while the "Relief Society" was controlled very largely by the Jews of the Orthodox Faith. Testator belonged to the Orthodox Faith, but there was nothing to show that he was dominated in his charities by sectarian feeling. He was well acquainted with both institutions. It was held, that the gift was to the National Jewish Hospital for Consumptives.

A Russian Polish Jew, who had lived in Jerusalem, and while there had been a member of a congregation composed of Polish Jews, made a gift to "the Jewish Hospital at Jerusalem." At the time of his residence at Jerusalem there were two Jewish Hospitals, the Bicur Cholim and the Rothschild. The support of the congregation of which he had been a member went to the Bicur Cholim. He had personal knowledge and acquaintance with this institution and had, upon one

A bequest to "the trustees of the Physio-Medical College of Cincinnati, Ohio, to be used by the college for the promotion of the medical art as "favored and believed in by" the testator, "and in support of that institution," will not, on proof that no corporation of that name exists, be decreed to belong to the "Physio-Medical Institute," when it appears that the testator intended to give the bequest to an unincor-

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occasion, been a patient therein. The Rothschild Hospital was supported by the Rothschild family, and had never received nor solicited private contributions. Testator had never been interested in other Jewish hospitals in Jerusalem established after he left there. During his lifetime he made several donations to the Bicur Cholim and referred to it as "the Jewish Hospital at Jerusalem." It was held, that the gift was to the Bicur Cholim Hospital.

In Serrales vs. De Damas, the question involved was which of the hospitals of Ponce is entitled to a legacy of 5,000 provincial pesos bequeathed in favor of . . . charity hospital of Ponce. The trial Court held that, according to the evidence, the . . . asylum for the poor of Our Lady of Guadalupe, publicly known by the name of . . . beggar's hospital, . . . hospital for poor people, and . . . hospital for beggared and old people, being the only hospital devoted exclusively to charity, it should receive the legacy. It was decided on appeal that from the evidence introduced, the conclusion is reached that the intention of the testator was to bequeath said legacy to this hospital, and that the word hospital is applied indiscriminately to institutions devoted to sheltering and receiving wanderers and poor persons, to raising and educating homeless children, and to curing indigent sick people, wherefore the said word "hospital" has no such limited significance as the appellant desires to give it. 18 Porto Rico 484, 1912.

A testator gave a legacy to "the Boy's Asylum and Farm School," there being no institution or association of any similar name, except a body incorporated by the name of "the Boston Asylum and Farm School for Indigent Boys." It was held that this corporation was entitled to the legacy. 1844, Minot vs. Boston Asylum, 7 Metc. (Mass.) 416.

Under a will giving a residuary estate in trust "to pay the sum of $4,000 to the Rhode Island Homeopathic Hospital to establish there a perpetual free bed," it appeared that, although the hospital had lost its building through financial difficulties, it had a fund of $7,000 for carrying on hospital work. Since the organization of another hospital it actively cooperated with it by loaning the greater part of its fund to it on mortgage security, and by giving the income of funds to it, and by using the income of bonds to maintain free beds therein. The members of the two corporations were for the most part the same. It has been held that the words "to establish there" might be interpreted to mean simply to establish in the hospital where, for the time being, the donee carried on its work rather than necessarily in its original hospital building, and that the donee was entitled to receive the bequest. 1913, Rhode Island Hospital Trust Co. vs. City of Newport (R. I.), 87 Atl. 182.

The cessation or suspension of the donee's activity for two and one-half years did not by any interpretation of the words, "cease to have an active existence" deprive it of the right of receiving the income of the trust fund under the will. 1913, Rhode Island Hospital Trust Co. vs. Rhode Island Homeopathic Hospital (R. I.), 87 Atl. 177.

porated medical school which he supposed to be incorporated, and which had ceased to exist.[5]

"In the first place, it does not appear that the will creates a public charity; it does not purport to found an institution, but to give the fund to one already in existence and having a determinant character. 'Both institutions,' private pecuniary enterprises, to the support of which the trustees—that is to say, the part interested—had power to apply the whole income. Such an enterprise is not a public charity even if it indirectly serves charitable ends. . . ."[6]

When, at the time of making a devise of real estate to any insane asylum which should be organized, located, and established in the future by virtue of some state or municipal authority, or some charter which might give the institution permanence, counties had no authority whatever to establish such insane asylums. It has been held that a county having a branch of its poorhouse set apart for keeping its insane paupers, and which, subsequently to the will, erected an additional building upon the poor farm, was not entitled to the devise, it not being such an institution as was contemplated by the bequest, and that the Northern Insane Asylum was entitled to the same.[7]

§ 443. **Legislature May Not Divert a Trust.** The Legislature has entire control of property held by public corporations for public purposes, and it may prohibit such corporations from accepting property as trustees under a private grant, but when the trust has once been accepted it cannot divert it to purposes other than that of the trust.[8]

5-6 "The master reports that the testator supposed that there was a corporation of the name used by him, of which one Curtis, at whose instance he gave the legacy, was president or director: . . . This school ceased to exist at Curtis' death, in 1881. The income is claimed by a corporation called the Physio-Medical Institute." Assuming that it would be impossible for that corporation to take a gift to the Physio-Medical College, it could not do so in the absence of evidence appropriating to it a name which, on its face, denotes a different body. But the evidence has not that effect. . . . 1899, Stratton vs. Physio-Medical College, 149 Mass. 505, 21 N. E. 874.

7 1877, Holden vs. Cook County, 87 Ill. 275.

8 Where land was given to a state hospital in trust to provide extra comforts for patients therein, act of General Assembly, approved February 20, 1906 (Laws 1906, C. 48), directing its special board of directors, under supervision of the General State Board, to construct

§ 444. **Court to Execute Will of Testator.** It is unnecessary here to discuss the many legal problems surrounding the ordinary disposition of property after the death of the owner, as to who may make the will, its validity, execution, etc. The power to take the gift after it has been made depends on the law of the jurisdiction in which the land is situated or in the case of personalty or the law of the domicile of the legatee. The various states have by statute many times regulated the amount or proportion of an estate which may be bequeathed and the time before death when the will must be made or executed. In general, the property must be administered according to the terms of the will, although "Devises for charitable purposes that are void at law are often sustained in chancery. . . . Where a literal execution of a charitable devise becomes inexpedient or impracticable, the Court will execute it as nearly as it can according to the original purpose."[9]

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on such land buildings suitable for a colony of epileptic patients, and Act March 12, 1908 (Laws 1908, C. 195), providing that if the General Board shall think it proper, the hospital should sell such land and purchase other land for the same purpose, were unconstitutional and void as a deprivation of property rights in the trust fund without due process of law, and would be so whether the trust was legal or not, since if unlawful the property would be in the heirs of the donor. 1913, General Board of State Hospital for the Insane vs. Robertson, 115 Va. 527, 79 S. E. 1064.

9 1919, Sisters of Charity vs. Emery, 144 La. 614, 81 So. 99.

McCarrol vs. Grand Lodge I. O. O. F., 154 Ark. 876, 243 S. W. 870. See also 1924, In re Hunter's Estate (Penna.), 123 Atl. 865. 1923, Society vs. Charbonnet, 154 La. 894, 98 South 410, and Zollman, American Law of Charities (Bruce Pub. Co., Milwaukee), p. 71, et seq. This work treats fully of all phases of the laws regulating charities.

CHAPTER XII

REPORTS AND RECORD KEEPING IN HOSPITALS

PART I

HOSPITAL RECORDS AS EVIDENCE IN COURT

§ 450. **Importance of Records.** The records of a hospital are important, not only to the staff of physicians, nurses, and other attendants, but as a record to be utilized in the courts of law and in matters of public record. Evidence admissible in the court of law may be prescribed by statute or may arise under common law and customary usage. Such admission may be permitted in special situations as under the Workmen's Compensation laws or may be made applicable to all cases involving information of the type therein contained. It will be noted that the holdings in the various jurisdictions differ materially. The following statutes codify the matters in some of the states.

Reports which are to be made under the various laws such as those relating to maternity hospitals, drug acts, prevention of blindness, etc., etc., are cited by subject and content. The chapter has been divided into two parts, the first of which includes the legal or judicial rulings upon the admissibility of hospital records as evidence in courts, and the second part dealing with the statutory and legal requirements as to record keeping, statistical reports of births, deaths, and the existence of certain diseases such as tuberculosis, venereal disorders, etc.

§ 451. **Hospital Records and Professional Secrecy.** The technical legal side of the admissibility of evidence will not be discussed here. It seems to be quite generally held that hospital records are not admissible in evidence in actions brought for personal injuries, for the cancellation of life insurance policies on the ground of fraud, or for the annulment of marriage on the ground of insanity. The courts hold that such evidence is not admissible on the ground that it is within

the privilege extended to communications between the physician and patient. Under this ruling the records themselves, the testimony of the custodian as to their contents, the testimony of the hospital physician or his assistants who treated or saw the patient and caused the entries to be made are inadmissible. This applies to the charity patients and pay patients with their own physicians alike.

Notwithstanding Pub. Acts 1903, No. 76, authorizing the inspection of records in public offices, or the common law right of inspection of public records, the records of an insane asylum showing the mental and physical condition of a patient there, made by a physician of the hospital in his professional capacity, and necessary to treat the patient, are within the provisions prohibiting physicians from disclosing any information acquired in attending a patient in his professional character, which information was necessary to enable him to prescribe for the patient, and the board of trustees of the hospital may refuse to permit a party to a pending suit to inspect the records in search of information necessary in the litigation.[1]

§ 452. **Records as Hearsay Testimony.** A register of patients, kept at a hospital, naming or pretending to name the disease with which a patient was said to be suffering, is not admissible in evidence to show and establish the nature of the disease.[2]

"The witness had no personal knowledge of the patient, and had no recollection of the case, apart from the record. Therefore the entries amounted to nothing more or less than that the superintendent wrote in the register what the attending physician told or reported to her concerning Price's illness. To permit these entries to be introduced in evidence was to disregard in a very noticeable manner the rule forbidding the introduction of hearsay testimony, as well as the spirit of the statute which prohibits the examination of a physician as to certain matters without the consent of the patient. . . ."[2]

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1 1913, Massachusetts Mutual Life Insurance Co. vs. Board of Trustees of Michigan Asylum for Insane, 178 Mich. 193, 144 N. W. 538.

2 1903, Price vs. Insurance Co., 90 Minn. 264, 95 N. W. 1118. Case relates to accident insurance—misrepresentation in application . . .

In an action on a life insurance policy, the record of the insured's case was kept by the hospital where he was treated about three months before applying for insurance. This was properly excluded as professional information of the physicians and registered nurses.[3]

A witness may testify to a memorandum made by him, at the time of a transaction, which he knows to have been true when written, though he has no recollection of the fact, independently of the paper.[4]

The records of a hospital, made in part by a physician who has no recollection of the case or of any act in connection therewith, and in part by others, not produced, and the testimony of the physician, based entirely on the records, not shown by any testimony to be true, are inadmissible as hearsay.[5]

Where the records of a hospital are shown to be true at the time when made, and that the physician who made them has no independent memory of the facts, they may be used by such physician to refresh his recollection.[6]

The records of a hospital are not public documents, receivable as evidence of the facts stated therein. . . .[6]

A hospital record, containing remarks regarding a patient entered thereon by a nurse, is not competent evidence to prove the facts therein stated.[7]

In a prosecution for abortion, resulting in the death of a woman, her dying declaration, implicating the accused, was admissible under evidence clearly showing it to have been made under knowledge of impending death, and within two hours of the time death actually occurred. It will not be disturbed if there be any evidence tending to support it.[8]

In a prosecution for abortion, resulting in the death of

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3 1919, Sparer vs. Travelers' Insurance Co. of Hartford, Conn., 173 N. Y. S. 673.

4 1860, Guy vs. Mead, 22 N. Y. 462.

5 1911, Levy vs. J. L. Mott Iron Works, 127 N. Y. S. 506.

6 1911, In re Hock's Will, 129 N. Y. S. 196.

7 "It was proper to exclude from consideration of the jury that part of the hospital record which consisted of the remarks of the nurse who attended the plaintiff. If she had been called as a witness, this part of the record might have been competent for use by her to refresh her memory. It was not competent as independent evidence of the truth of the statements." 1899, Baird vs. Reilly, 92 Fed. 884.

8 1916, State vs. Shapiro, 89 N. J. L. 319, 98 Atl. 437.

a woman operated on, the hospital records, showing her condition, temperature, etc., are inadmissible in evidence. Such records may be referred to by nurses when testifying to refresh their recollection.[9]

The hospital is a city institution, and the ordinances require the managers to keep a registry of all cases for local and specific purposes, but such records are not public records, in the sense that makes them competent evidence for all purposes. . . .[10]

Books kept in a hospital containing entries made in regard to the cases treated there are not public records, not being kept under any requirement of law. Where it is not shown that the person who made the entries is dead or cannot be produced, such books are not admissible in evidence, especially if it does not appear that they are complete and perfect records.[11]

A record of the condition and treatment of a patient in a hospital, produced at a trial forty years after its date, by the superintendent of the hospital, as a part of a series of records, of which he is the official custodian, purporting to be contemporaneously made by the attending physician, of all cases there treated, and which it is their duty to make, is admissible in evidence, as a foundation for the opinion of an expert whether it indicates the mental disease of the patient, without identifying the person who made it.[12]

The daily record kept in a hospital of the medical treatment of its patients does not prove itself, and is not admissible in evidence without the testimony of the person who made the entry relied upon or that of some person properly charged with the custody of the records. . . [13]

The records of a state hospital kept previous to 1905 are admissible in a hearing involving the mental capacity of a deceased patient to show her medical history and treatment at the hospital.[14]

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9 1886, State vs. Hinkley, 9 N. J. L. 118.

10 1899, Connor vs. Metropolitan Life Ins. Co., 78 Mo. App. 131.

11 1904, Cashin vs. New York N. H. and H. R. Co., 185 Mass. 543. 1904.

12 1868, Inhabitants of Townsend vs. Inhabitants of Pepperell, 99 Mass. 40.

13 1905, Feeney vs. York Manuf. Co., 189 Mass. 336.

14 1917, Raymond vs. Flint, 225 Mass. 521, 114 N. E. 811.

In a personal injury action, the records of the hospital in which the plaintiff was treated were not admissible in evidence, without proof of their correctness and opportunity to examine the persons by whom they were made, notwithstanding the absence from the jurisdiction of the attending physicians.[15]

. . . The daily record of a patient at the hospital for the insane, required to be kept by Section 561 q, Rev. St. 1898, is admissible in evidence to show the mental characteristics of the patient while at the hospital in any judicial proceeding where the facts in that regard are material, under the general rule that a public record required to be kept for public purposes is admissible in judicial proceeding where such matters are material. . . .[16]

. . . Where the clinical reports of a hospital were introduced in evidence, without the person who made the entries being called as witness, and the senior surgeon, who signed them, testified that some of the facts stated in the reports were within his personal knowledge and others were not, and that "clinical records are not infallible by a long ways; they are frequently wrong, I will say the trial judge did not err in instructing: 'As to these hospital records, they have been received in evidence in this case. Their probative effect, that is, how much of them you believe, or how much of them you disbelieve, is left solely as a question for your determination.' "[17]

In a personal injury action against a street railroad company, a hospital record not made by the witness, who could not tell by whom it was made, he having found it among other records, is not admissible without further showing, and its exclusion could not have injured the plaintiff where the evidence therein was admitted, without objection, in better form by the oral testimony of the physicians. . . .[18]

§ 453. **Conditions for Admissibility of Records.** To render a record admissible as evidence there need not be any law or ordinance requiring it to be kept, but it is suf-

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15 1919, Dougherty vs. Kalbach, 175 N. Y. S. 837.

16 1901, Hampton vs. State, 111 Wisc. 127, 86 N. W. 596.

17 1919, Wilson vs. Detroit United Ry., 208 Mich. 411, 175 N. W. 172.

18 1919, Zipus vs. United Rys. and Electric Co. of Baltimore City, 135 Md. 297, 108 Atl. 884.

ficient if such record be kept by some person in the regular course of his occupation or business.[19]

In a personal injury action, the evidence was held to show that a hospital record which was required to be kept by an intern was admissible as evidence. For a record to be admissible as evidence, the entries must be made contemporaneously with the facts to which they relate.

That a hospital record was made up only every three days, as was the regular method, did not render it inadmissible because not contemporaneous, since "contemporaneous" does not mean that the record must be made at the moment of the occurrence, but only within such time as would make it reasonably a part of the transaction.

A hospital record of the progress of a patient, made by the intern in the regular course of business, was not rendered inadmissible because some of the facts recorded were not of his own personal knowledge but were reported to him by nurses and other doctors.

Under a system which obtains at that (Sherbrooke Hospital), the senior nurse in charge of the plaintiff "was required to keep and did keep a hospital record of the case. . . . It appeared that other nurses, especially night nurses, made entries on this record, and no evidence was introduced as to the accuracy of them. . . . The record was offered as independent evidence, and its exclusion is assigned as error. Assuming, but not deciding, that such a record falls within the rule governing the admission of regular entries upon the principle of necessity, that rule requires that the person who made the entries 'must be unavailable as a witness.'[20] 'The ground,' says Chief Justice Shaw in North Bank vs. Abbott,[21] 'is the impossibility of obtaining the testimony, and the cause of such impossibility seems immaterial.' Here one of the nurses, who made a part of the entries, was present at the trial, and the absence of the others was unaccounted for. In excluding the record offered, error does not appear."

A suit was brought against Kansas City asking damages for personal injuries sustained through alleged injury to the

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19 1914, Ribas vs. Revere Rubber Co., 37 R. I. 189, 91 Atl. 58.
20 2 Wigmore on Evidence, § 1521.
21 13 Pick (Mass.) 465, 25 Am. Dec. 334.

defendant in permitting a coal hole in one of its streets to become out of repair, as a result of which, while passing over it, the plaintiff stumbled and fell injuring her right knee which resulted in the amputation of her right leg above the knee. The opinion of the Court, which relates to the admission in evidence of the hospital records, will be quoted as well as the related testimony.[22]

Dr. F. C. Frederick testified for the defendant substantially as follows: "I am in charge of the records at the city hospital; been employed there since 1892; kept records for the last five years; have the official records with me kept in accordance with the ordinances of the city; have examined them with reference to the duties and circumstances pending confinement of Stella Smart at City Hospital; the first date of admission on May 26, 1895; she was in the hospital at that time until June 14, 1895; the diagnosis of that was tuberculosis. (Plaintiff objects to the diagnosis because it is not a part of the records of the hospital.) Q. Is the diagnosis a part of the record? A. Yes, sir; it is on the record book, the same as the other part. By Mr. Williams: I now ask the witness the question as to the diagnosis. By Court: I don't know who made it. A. The surgeon in charge. By Court: Did he tell you about it? A. No, sir; it was just put on the record. By Court: Who put it down? A. The house surgeon. By Court: You don't know whether it was correct or not? A. No, sir; whatever he put down was correct so far as I was concerned. It was there on the record. (Plaintiff objects for the reason it is incompetent. Objection sustained by Court. No exception.) The next time she was in the hospital was April 8, 1896, and she was discharged May 18, 1896. The next time she was in the hospital was August 24, 1896, being the third time. A. She was in the hospital until the 10th of September, 1896. The next time she was in the hospital was March 15, 1898, her leg being amputated April 13th; she was discharged September 19, 1898. Q. Doctor, I will get you to state again how the diagnosis of the various cases is put on record. State whether or not it is done in every instance. A. It is a regular duty

22 1907, Smart vs. Kansas City, 208 Mo. 162, 105 S. W. 709.

performed by the house surgeon. Whenever he sees a case and satisfies himself that—(Plaintiff objects to witness detailing the custom of the house surgeon.) By Court: What the doctor wrote on the book is not admissible for two reasons. By Mr. Williams: You mean it is a privileged communication, confidential information, and we can't prove it? By Court: Yes, sir; if he gets it from the patient. Q. Your understanding is that the diagnosis is first made by the physician in attendance and that he copies that diagnosis, and it is written down by the physician into that record? (Plaintiff objects to his understanding of the matter.) By Court: He means what really occurs. A. That is the process in each case.''[1]

''The plaintiff objected to the evidence offered because the entries made were privileged communications, first made to the attending physicians in order that they might correctly diagnose her case and properly treat her. The diagnosis was made by an examination of the patient and by interrogating her regarding the complaint. This is necessary to be known by the physician in order that he may prescribe the proper treatment, and when he once acquires that information the law declares it to be a confidential communication, and disqualifies the physician from divulging the same upon the witness stand. Mr. Elliot, in his work on Evidence, in the discussion of such statutes, says: 'It seems to be conceded by both opinions that hospital physicians who attend such persons at the hospital, could not testify as to what they learned while so attending them. . . . This is undoubtedly the rule as announced by all the authorities, and, that being so, it seems that it must follow as a natural sequence, that when the physician subsequently copies that privileged communication upon the record of the hospital, it still remains privileged. If that is not true, then the law which prevents the hospital physician from testifying to such matters could be violated both in letter and spirit, and the statute nullified, by the physician copying into the record all the information acquired by him from his patient, and then offering or permitting the record to be offered in evidence containing the

1 1907, Same, 208 Mo. 162, 105 S. W. 709.

diagnosis, and thereby accomplishing, by indirection, that which is expressly prohibited in a direct manner. . . .' "[2]

In the case at bar, Dr. Frederick testified that he did not know whether the entries made on the record were true or false, that the house surgeon writes the diagnosis in the record, and that he had no personal knowledge as to the truthfulness of the things written. The mere fact that the ordinance of a city requires such a record to be kept is no reason on earth why the statute of privileged communications should be violated. The record is required to be kept for the benefit of the institution, and not for the benefit of outside litigants. It is not the subject or purpose of the ordinance to repeal the statute in question, but even if it were it would be null and void, because in conflict with the statute. The object of the statute is to guarantee privileged communications between all patients and their physicians, and it is wholly immaterial whether they are in or out of hospitals. The only case where the patient is denied the protection of this statute is where his or her case falls under the rule of necessity. . . ."[2]

It has been held that when a statute which provides for the maintenance of state hospitals for the indigent insane, and which statute made it incumbent on those in charge of asylums "to make or cause to be made entries from time to time of the mental state, bodily condition, etc.," of the patients, and which expressly provided that on writs of habeas corpus brought by the insane, the medical history of the patient, appearing in the case book, should be given in evidence and the superintendent or medical officer in charge should be sworn, it was held in an action to annul an inmate's marriage on the ground of insanity, that the evidence was admissible.[3]

§ 454. **Admission of Hospital Records by Laws of Pennsylvania and Massachusetts.** The two states which have by statute authorized the use of hospital records are Pennsylvania and Massachusetts. Their provisions are as follows:

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2 1907, Same, 208 Mo. 162, 105 S. W. 709.

3 13 R. C. L. 943, Sec. 6. In order to invoke the rule of exclusion two things must appear: "(1) That the relation of physician and patient existed at the time the statements were made; (2) that the information given the physician 'was necessary to enable him to prescribe or act for the patient'." 1923, Garret vs. City of Butte (Mont.), 221 Pac. 537.

Copies of Hospital Records certified by the persons in custody to be true and complete, are to be admissible in evidence in proceedings before the Industrial Accident Board, or any member thereof. The Board may require the original record.[4]

The records kept by a hospital of the medical or surgical treatment given to an employee in such hospital are to be admissible as evidence of the medical and surgical matters stated therein, but shall not be conclusive proof of such matters.[5]

PART II

LAWS REGARDING REPORTS, RECORDS, ETC.

§ 455. **Subject-Matter of State Laws.** This second portion of the chapter, as previously stated, will include the reporting of statistical details of births, deaths, the existence of certain diseases, and the compliance with or the use of certain solutions such as prophylactic treatment for the eyes of infants. That is, the requirement of reporting vital statistics in the absence of medical attendants and among which is sometimes included the reporting of statistical and personal records as in Arizona, Colorado, etc.; the reports relative to tuberculosis, venereal disorders, or other contagious or infectious diseases, the requirements of some of the drug and spirituous liquor acts, etc., are included. Some of the states place these responsibilities upon the State Board of Health as in Mississippi where the Board has entire charge of the regulation and suppression of venereal disorders,[6] or in Alabama, where it supervises the reporting of births and deaths. Although this Board may in turn require reports from such institutions, notice of the same is not taken in the statute, and consequently no mention is made here. The arrangement of material is by state, statute, and subject.

§ 456. **Alabama.** As is shown in the following quotation the reporting of births, deaths, and disease may be in the hands of midwives or physicians, there being no direct mention of the hospital or institution sometimes involved.

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4 Mass. G. A. 1919, C. 198, p. 152, Sec. 19.

5 Penna. Stats. 1920 (West), p. 2141, Workmen's Compensation, Sec. 22045. (1919, June 26; P. L. 642, Sec. 6.) This section amends Sec. 422 of Art. IV of the act of 1915, June 2; P. L. 736.

6 Laws 1918, C. 194, p. 240.

Within the first five days of each calendar month it is the duty of every physician or midwife to report all cases of childbirth attended during the last preceding month either to the county health officer or to a municipal health officer. In each case they are to specify the name, place of birth, color, occupation, and race of parents, the sex, color, race, and date of birth of the child, together with such other details as may be required by the State Board of Health. Also, they are to report deaths during the last preceding month to the county or municipal health officer, and every physician who is called to a case of contagious disease (leprosy, cholera, glanders, tuberculosis, etc.), is to report to the county, city, or town health officer in whose jurisdiction the case is located.[7]

§ 457. **Arizona.** All superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in, or other institutions, public or private, to which persons resort for treatment of disease, confinement, or are committed by process of law, are hereby required to make a record of all personal and statistical particulars relative to the inmates in their institutions at the date of approval of this chapter, that are required in the forms of certificates . . .; and thereafter such record shall be . . . made for all future inmates at the time of their admission. For persons admitted or committed for medical treatment of disease, the physician in charge shall specify . . . the nature of the disease, and where, in his opinion, it was contracted. Personal particulars and information required shall be obtained from the individual himself when practicable to do so or from relatives and friends.

If there is no attending physician or midwife at the birth of a child, the father or mother, the householder or owner of the premises, manager or superintendent of public or private institutions in which the birth occurred is to notify the local registrar of births. Ordinarily, births and deaths are reported by the attendant physician or midwife.[8]

§ 458. **Arkansas.** The State Board of Health is to provide for the registration of births, deaths, etc.[9]

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7 Alabama Code 1907, Sec. 711.

8 Revised Statutes of Arizona, 1913, Civil Code, p. 1431, § 4421.

9 Digest 1921 (Crawford and Moses), Sec. 5147, 5151 through the Bureau of Vital Statistics.

§ 459. **California.** The Bureau of Vital Statistics has charge of the matter of reporting births and deaths. In every birth it is the duty of the father or mother of the child, the householder, or owner of the premises where the birth occurred, or the manager or superintendent of the public or private institution where the birth occurred, each in the order named, within ten days, after the date of such birth to report to the local registrar the fact of such birth.[10]

The owner, the physician, nurse, etc., are to report the existence of contagious diseases, cholera, plague, leprosy, etc., to the local health officer.[11] Prescriptions for narcotic drugs can be given only by licensed physicians, etc.[12]

§ 460. **Colorado.** Persons maintaining a hospital, dispensary, or other institutions for the treatment or care of the sick or injured are quarterly to make a report to the State Board of Health of the number and names of people in charge or employed in such institution, and if physicians, the number of their licenses to practice medicine in this State with such other information as may be required by the rules and regulations of said Board.[13]

All superintendents, managers, or other persons in charge of hospitals, almshouses, lying-in, or other institutions, public or private, to which persons resort for treatment of disease, confinement, or are committed by the process of law, are hereby required to make a record of all the personal or statistical particulars relative to the inmates in their institution . . . as directed by the State Registrar and thereafter for all future inmates at the time of their admission.

The physician in charge is to record the nature of the disease and where, in his opinion, it was contracted. Personal particulars are to be obtained from the individual if practicable, or relatives, friends, or other persons acquainted with the facts.[14]

The State Board of Health is to supervise the registration of births and deaths and, ordinarily, the attendant physician or midwife is to report the same. In the absence thereof in

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10 Stats. 1921, C. 523, p. 824, amending previous act 1915, Secs. 13, 18, 22.

11 Stats. 1917, C. 123, p. 171.

12 1915, General Laws (Deering), Act 2724, Sec. 1.

13 Colorado 1909, S. L. C. 172, p. 411.

14 Colorado R. S. 1912, C. 17, § 452.

deaths the undertaker notifies the Health Officer, and in births the parents, householder, or owner of the premises, manager or superintendent of the public or private institution in which the birth occurred is to notify the local registrar of such fact within ten days.[15]

Any physician, intern or other person who makes a diagnosis in, prescribes for or treats a case of venereal disease, and any superintendent or manager of a state, county, or city hospital, sanitarium, dispensary, charitable, or penal institution in which there is a case of venereal disease, shall make a report of such cases to the health authorities, according to such form, manner, and time as the State Board of Health shall direct.[16]

The chief officer having charge for the time being of any hospital, dispensary, asylum, or other similar private or public institution is to report . . . "the name, nativity, age, sex, color, occupation, place where last employed, if known, and previous address of every person having tuberculosis who comes into his care or under his observation, within twenty-four hours thereafter. The chief officer in charge of a regular incorporated sanitarium or other institution solely for the care of persons having tuberculosis, shall make the report required. . . ." The diagnosis is to state the part of the body affected, etc.[17]

The sale of narcotic and habit-forming drugs is restricted. The sale of opium, coca leaves, etc., is restricted except upon written prescription of a duly licensed physician, dentist, or veterinary surgeon. . . . "It shall be unlawful for any person to sell, . . . (person defined in Sec. 20 as 'a partnership, association, company, or corporation'.) . . ."[18]

§ 461. **Connecticut.** Birth certificates are to be filed by the attendant physician, midwife, or parents of a child with the Registrar within ten days after the birth thereof.[19] Death certificates are made out by physicians.[20]

The sale of narcotic drugs is to be made only on the

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15 Colorado Rev. Stats. 1908. Sec. 371, et seq., p. 253, Chap. XIV.

16 Colorado S. L. 1919, C. 57, p. 248, Sec. 3.

17 Colorado S. L. 1913, C. 125, p. 457, Sec. 1.

18 Colorado 1915, S. L. C. 75, p. 209.

19 P. A. 1919, C. 56, p. 2717, amending previous act.

20 Same, C. 45, p. 2710.

written order of an incorporated hospital, college, or scientific institution through its superintendent or official in immediate charge, etc.[1]

It is the duty of the officer in charge of any hospital, dispensary, asylum, or similar institution to report in writing the name, age, sex, color, occupation, etc., of every patient having tuberculosis who comes under the care or observation of such officer, within twenty-four hours thereafter.[2]

The State Department of Health may require reports and information at such times and of such facts, and generally of such nature and extent, relating to the safety of life and the promotion of health, as its by-laws or rules may provide, from all public dispensaries, hospitals, asylums, infirmaries, etc., but such reports and information shall be required only concerning matters in respect of which said department may in its opinion need information for the proper discharge of its duties.[3]

Cases of inflammation of the eyes of the new-born are to be reported by the professional attendant or other person within six hours to the local health officer. It is the duty of the midwife or any person in a state-aided institution to use prophylactic solution in the eyes of the new-born.[4]

§ 462. **Delaware.** It is the duty of any physician, surgeon, obstetrician, midwife, nurse, maternity home, or hospital of any nature . . . attendant on or assisting . . . any infant or mother of an infant at childbirth, or any time within two weeks after childbirth knowing the condition (known as "Inflammation of the Eyes of the Newborn") to exist within six hours thereafter to report such fact to the local health officer. . . . The record of prophylactic details should be endorsed on every birth certificate.[5]

Any physician or other person who makes a diagnosis in or treats a case of venereal disease, and every superintendent or manager of a hospital, dispensary, or charitable or penal institution in which there is a case of venereal disease, shall make a report of such case to the health authorities by num-

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1 Rev. 1918, Sec. 2506.

2 Connecticut G. S. Rev. 1918, Title 22, C. 136, p. 798, Sec. 2630.

3 Rev. 1918, Sec. 2371.

4 Connecticut P. A. 1921, C. 241, p. 3232.

5 Delaware Laws 1917, C. 51, p. 137.

ber without name and address so long as the patient shall obey the rules and regulations of the State Board of Health.[6]

It is the duty of the attendant, physician or midwife to report births or, if there is none such, it is the duty of the father or mother, the householder, or owner of the premises, manager or superintendent of public or private institutions in which the birth occurred, to notify the local registrar, within ten days thereafter.[7] Death returns are to be made by the physician.[8]

§ 463. **Florida.** All superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in, or other institutions, public or private, to which persons resort for treatment of diseases, confinement, or are committed by process of law, are to make a record of all the personal and statistical particulars relative to the inmates in their institutions as directed by the State Registrar, and thereafter such record shall be, by them, made for all future inmates at the time of their admittance. The record is to contain the nature of the disease, when contracted, or, if injured, the nature and cause thereof.[9]

Any physician or other person who makes a diagnosis in or treats a case of venereal disease, or any superintendent or manager of a hospital, dispensary, or charitable or penal institution in which there is a case of venereal disease, shall make a report of such case to the Health Authorities according to such form and manner as the State Board of Health shall direct.[10]

§ 464. **Georgia.** The registration of births and deaths is in charge of the State Board of Health. Death without medical attendance is to be reported by the undertaker to the local registrar. The physician or midwife is to file a birth certificate, and in absence of such attendance, parents, householder, or owner of premises, or the manager or superintendent of the public or private institution where the birth occurred is to report same.[11]

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6 Laws 1919, C. 53, p. 124.

7 Rev. Code 1915, Sec. 807.

8 Same, Sec. 812.

9 Florida Laws 1915, C. 6892, No. 86, p. 214, Rev. Gen. Stats. 1920, Sec. 2087. An act creating a Bureau of Vital Statistics and providing for the registration of births and deaths.

10 Laws 1919, C. 7829, No. 47, p. 92.

11 Georgia Laws 1914, No. 466, p. 157.

Any physician or other person who makes a diagnosis in or treats a case of venereal disease, and any superintendent or manager of a hospital, dispensary, or charitable, or penal institution in which there is a case of venereal disease, shall make a report of such case to the health authorities, according to such form and manner as the State Board of Health shall direct.[12]

§ 465. **Idaho.** In order to afford the Department of Public Welfare better advantages for obtaining knowledge important to be incorporated with that collected through special investigations and from other sources, the superintendent or other person in charge of any public, private, or parochial hospital, "so far as practicable," is to furnish any information bearing upon the public health which may be requested by the State Department of Health, for the purpose of enabling it to better perform the duties of collecting and distributing useful knowledge on the subject.[13]

All superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in, or other institutions, public or private, to which persons resort for treatment of diseases, confinement, or are committed by process of law, are hereby required to make a record of all the personal and statistical particulars relative to the inmates in their institutions . . . as directed by the Department of Public Welfare; and thereafter such record shall be, by them, made for all inmates at the time of their admission; and in care of persons admitted or committed for medical treatment of disease, the physician in charge shall specify the entry in record, the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do so; and when they cannot be so obtained, they shall be secured in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts.[14]

Births are to be reported by the attendant physician, the midwife, parents, etc., or manager or superintendent of the

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[12] Georgia Laws 1918, p. 276, Sec. 2.

[13] Idaho C. S. 1919, title 12, C. 70, p. 475, § 1648.

[14] Idaho C. S. 1919, title 12, C. 70, p. 471, Vital Statistics, § 1640.

institution in which the birth occurred, while deaths are to be reported by the attendant physician.[15]

The proprietor of every hospital, hospital ward, or other private place for lying-in purposes to which licenses for the maintenance of maternity homes have been granted, shall within three days after the birth of any child, report to the Commissioner of Public Welfare the date and place of birth, the name, sex, and color of the child.[16]

It is the duty of any physician, surgeon, obstetrician, midwife, nurse, maternity home, or hospital assisting in any way whatsoever any infant or the mother of any infant at childbirth, or at any time within two weeks after childbirth, to report the existence of ophthalmia neonatorum in writing to the local health officer.[17]

Any physician or other person who makes a diagnosis or treats a case of venereal disease, and any superintendent or manager of a hospital, dispensary, or charitable, or penal institution in which there is a case of venereal disease, is to make a report of such case to the health authorities, according to such form and manner as the State Department of Public Welfare shall direct.[18]

It is lawful for wholesalers, manufacturers, or jobbers or regularly licensed retail druggists to sell narcotic drugs to hospitals, colleges, or scientific institutions upon the certificate, of the head thereof or of a licensed physician connected therewith, that the same are desired for medical or scientific purposes.[19]

§ 466. **Illinois.** All superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in, or other institutions, public or private, to which persons resort for the treatment of diseases . . . shall make a record of all the personal and statistical particulars relative to the inmates of their institutions . . . in the forms of the certificates prescribed by the State Board of Health; and thereafter such record shall be, by them, made for all future

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15 C. S. 1919, Sec. 1636.

16 Idaho S. L. 1921, C. 57, p. 101, Sec. 2.

17 Idaho S. L. 1921, C. 233, p. 522.

18 Idaho S. L. 1921, C. 200, p. 406.

19 Idaho Comp. Stats. 1919, Sec. 2185.

inmates at the time of their admission. In case of persons admitted for medical or surgical treatment of disease or injury, the physician in charge shall specify . . . the nature of the disease or injury, and where, in his opinion, it was contracted or received. The personal particulars and information shall be obtained from the individual himself if it is practicable . . . or in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts.[20]

It is the duty of any physician, surgeon, . . . nurse, maternity home, or hospital, of any nature . . . assisting in any way whatsoever, any woman at childbirth . . . observing or having a reasonable opportunity to observe the condition (ophthalmia neonatorum), and within six hours thereafter, to report in writing or by telephone, followed by a written report . . . to the health authorities of the city, town, village, or other political division . . . in which the mother of any such infant may reside; provided, that such reports and records thereof shall be deemed privileged information and shall not be open to the public. Copies of the act are to be kept posted in conspicuous places in the institution.[1]

Deaths are to be registered by physician, or if unattended the undertaker is to notify the local registrar and coroner, while births are to be registered by the attendant physician or midwife, the parent, householder, manager, or superintendent of the public or private institution in which same occurred.[2]

§ 467. **Indiana.** It is the duty of the superintendent or of any person or persons having charge of hospitals, poor asylums, lying-in, or other institutions, public or private, to which persons resort for the treatment of disease, confinement, or are committed by due process of law, to make and keep on file a record of all personal and statistical particulars relative to the inmates of such institutions, as may be required by the State Board of Health.[3]

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20 Illinois Call. 1916 Stat. p. 1580, § 10616 (16).

1 Illinois Call. 1916 Stat., p. 484, Criminal Code, § 3530 (2).

2 Illinois Rev. Stats. 1919 (Hurd), Ch. 171½, Secs. 24, 26.

3 Indiana Burns' Anno. Stats. 1914, Vol. 3, p. 779. Boards of Health, Sec. 7607 a. Records of inmates of hospitals, etc.

The State Board of Health has supervision of the system of the registration of births and deaths, and it is the duty of all physicians, midwives, and all other persons who are now permitted or entitled to treat diseases or deformity under obstetrics, etc., to report all births, deaths, and contagious or infectious diseases listed as reportable in the rules of the State Board of Health.[4]

The Secretary of the State Board of Health is the registrar of vital statistics. Physicians and midwives are to return the reports of births and deaths.[5]

The sale of drugs is to be made only to licensed practitioners.[6]

§ 469. **Kansas.** Every licensed maternity hospital or home is to keep a record upon forms prescribed and provided by the State Board of Health containing the true name of every patient, the residence, name, and address of the physician or midwife attending, etc.[7]

The sale, gift, etc., of opium and cocoa leaves and their derivatives is unlawful except to physicians, etc.[8]

A regularly established hospital engaged in caring for the sick or injured is not prohibited from receiving such amounts of alcohol as are necessary for medicinal, mechanical, and scientific purposes only.[9]

The State Board of Health has general supervision over the registration of vital statistics, the forms of disease prevalent, the preparation of forms for reporting, etc. When there is no attendant physician at the birth of a child, the parents, householder, or person in charge of the property, manager or superintendent of public or private institution in which the birth occurred is to notify the local registrar, within ten days after the birth, of the fact that it occurred.[10]

§ 471. **Louisiana.** All superintendents or managers or other persons in charge of hospitals, almshouses, lying-in, or other institutions, public or private, to which persons resort for treatment of diseases, confinement, or are committed by

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[4] Indiana Burns' Anno. Stats. 1914, Sec. 7595.

[5] Comp. Code 1919, Secs. 1364, 1365, 1368.

[6] Same, Sec. 1430.

[7] Laws 1919, C. 210, p. 286, Sec. 7.

[8] Laws 1921, C. 210, p. 348.

[9] Laws 1917, C. 215, p. 285, Sec. 6.

[10] Comp. Stats. 1915, (McIntosh), Sec. 1016, 2, etc.

process of law, shall make a record of all personal and statistical particulars relative to the inmates in their institutions . . . as directed by the State Registrar; and thereafter . . . for all future inmates at the time of their admittance.[11]

When persons are admitted for the treatment of venereal disease, the physician is to specify the nature of the disease, and where in his opinion it was contracted. Personal particulars are to be obtained from the person himself if practicable to do so . . . or other persons acquainted with the facts.

Doctors and midwives are to make the birth and death returns.[12]

It is the duty of all maternity homes and any and all hospitals, etc., to maintain such records of cases of ophthalmia neonatorum as the State Board of Health shall direct.[13]

§ 472. **Maine.** Within six days following such events . . . the keeper . . . hospital, almshouse, or other institution . . . shall report every birth or death happening under his charge.[14]

The physician, midwife, or nurse is to use the prophylactic solution in the eyes of the new-born immediately following birth.[15]

Every superintendent, manager or physician in charge of any state, county, or municipal charitable . . . institution shall immediately report to the State Board of Health every case of venereal disease among the inmates of said institution. State, county, or municipal-aided institutions are to make similar reports.[16]

The chief officer having charge for the time being of any hospital, dispensary, asylum, sanatorium, or other similar private or public institution in the State shall report to the State Board of Health the name, age, sex, color, occupation, place where last employed, if known, and previous address

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11 Louisiana Statutes 1920, p. 819, Bureau of Vital Statistics, Sec. 17.

12 1915, Marr's Anno. Rev. Stats., Sec. 651.

13 1915, Marr's Anno. Stats., Sec. 675.

14 Maine G. R. S. 1916, C. 64, p. 1015. Vital Statistics, Sec. 26.

15 Laws 1919, C. 164, p. 165.

16 Maine, 1917 Laws, C. 301, p. 435, Venereal Diseases.

of every patient having tuberculosis who comes into his care or under his observation, within forty-eight hours thereafter.[17]

§ 473. **Maryland.** All superintendents or managers or other persons in charge of hospitals, almshouses, lying-in, or other institutions, public or private, to which persons resort for treatment of diseases or are committed by process of law, are required to make record of the personal and statistical particulars relative to the inmates in their institutions . . . as directed by the State Registrar, and thereafter such record shall be by them made for all future inmates at the time of their admission. When persons are admitted . . . for medical treatment of disease the physician in charge is to specify for entry in the record the nature of the disease and where, in his opinion, it was contracted. The personal particulars are to be obtained from the individual, if practicable, or from relatives or other persons acquainted with the facts.[18]

The superintendent or other person in charge or control of any hospital, dispensary . . . or other institution deriving the whole or any part of its support from the public funds of the State . . . or if any city, town, or county . . . having in charge or under care or custody any person or persons suffering with pulmonary or laryngeal tuberculosis shall, within forty-eight hours . . . make or cause to be made, in the manner and form prescribed by the State Board of Health, a record of the name, age, sex; . . . all such records are to be delivered, under seal, to the State Board of Health.[19]

Whenever any . . . superintendent, manager, or director of a hospital, a private or public institution of any kind shall know or have reason to believe that any guest, inmate, or other person . . . is sick with . . . any contagious or infectious disease . . . he shall immediately give notice thereof in writing to the health officer.[1]

Births and deaths are to be reported by physicians and midwives to the local registrar. In the absence of such

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17 1916, Rev. Stats., Ch. 19, Sec. 9; 1909, C. 78, Sec. 2.

18 Maryland Code 1914, Art. 43, p. 647. Vital Statistics, Sec. 21.

19 Maryland Code, Bagley, 1911, Art. 43, p. 1099, Tuberculosis, § 85.

1 Maryland Laws 1916, C. 242, p. 492. Amends Sec. 94, Art. 43, Code.

attendant, the father, coroner, householder, keeper of any hospital, almshouse, or other institution is to report the same in writing to the local registrar or deputy registrar of the registration district within four days succeeding the birth.[2]

§ 474. **Massachusetts.** The keeper, superintendent, or person in charge of a . . . hospital, almshouse, or other institution, public or private, which receives inmates from within or without the limits of the city or town in which it is located shall, when a person is received, obtain a record of all the facts which would be required for record in the event of the death . . . and shall, on or before the fifth day of each month, give notice to the city or town clerk of every birth and death among the persons under his charge during the preceding month. . . .[3]

Any hospital in this Commonwealth rendering . . . medical or surgical service to any person at the expense of the city or town, shall, upon request, furnish such city or town with any or all information which it may have or be able to secure from the patient or from any person with whom, with respect to such person, it has dealt, as to any legal settlement of such patient.[4]

Hospital, dispensary, laboratory, and morbidity reports and records pertaining to gonorrhea or syphilis shall not be public records, and the contents thereof shall not be divulged by any person having charge of or access to the same except upon proper judicial order to a person whose official duties, in the opinion of the Commissioner of Health, entitle him to receive information contained therein. These reports and records of cases of gonorrhea or syphilis, other than the permanent records of hospitals and institutions, are to be destroyed at the expiration of five years from the year in which they were made.[5]

§ 475. **Michigan.**[6] All superintendents or managers, or other persons in charge of hospitals or lying-in institutions to which women resort for confinement, are required to make record of all personal and statistical particulars relative to

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2 Laws 1914, C. 747, Sec. 14, p. 1316.

3 Mass. R. L. 1902, C. 29, p. 403. Return and registry of births, etc. Sec. 6.

4 Mass. Acts 1917, Ch. 111, p. 108.

5 Mass. G. A. 1918, Ch. 96, p. 74.

6 Michigan Comp. Laws, Ch. 50, p. 705; Act 96, 1909, p. 179. An

the inmates of their institutions. . . . And thereafter such record shall be by them made, for all future inmates, at the time of admission.[7]

It shall also be the duty of the chief officer having charge for the time being of any hospital, dispensary, asylum, or other similar private or public institution . . . to report . . . the name, nativity, age, sex, color . . . of every patient having tuberculosis who comes into his care or under his observation, within twenty-four hours thereafter.[8]

The act to prohibit the manufacture, sale, etc., of spirituous and intoxicating liquors is not to prevent the manufacture and sale of ethyl alcohol in quantities of not less than ten gallons to hospitals, infirmaries, medical, and educational institutions using the same for medicinal, mechanical, chemical, or scientific purposes.[9]

The State Commissioner of Health is given charge of the registration of births and deaths, the issuance of certificates, and the preservation of records.[10]

§ 476. **Minnesota.** The physician or midwife attending at birth of any child is to furnish a certificate of the birth to the local registrar.[11]

"When the birth occurs in any lying-in hospital or in any private, public, charitable or state institution, without attendance by a physician or licensed midwife, the superintendent, manager, or person in charge shall make and file the certificate of birth."[12]

All superintendents, managers or persons in charge of lying-in or other hospitals, almshouses, charitable or other institutions, public or private, to which persons resort for confinement, treatment of disease, care, or who are committed by process of law, shall at once make and preserve a record

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act to require certain reports to the Auditor General from the insane asylum . . . and from the private courts, relative to insane and feeble-minded persons, and to prescribe the duty of the Auditor General with reference thereto.

7 Mich. Statutes, title VI, Ch. 25, p. 704, Sec. 1573.

8 Mich. Statutes, title XII, C. 44, p. 1372. Preservation of Public Health, Sec. 3157.

9 P. A. 1921, No. 336, p. 615, Sec. 9.

10 P. A. 1921, No. 170, p. 349.

11 Minne. G. S. 1913, Public Health, p. 1025, § 4651.

12 Laws 1913, C. 57903.

of all personal and statistical particulars relative to the inmates now in, or hereafter admitted to their institutions, that are required to be stated in the certificate of birth and death. If admitted for medical treatment of disease the physician in charge shall specify, in the record, the nature of the disease and where it was contracted.[13]

The undertaker, or person acting as such, at the burial of any person dying in this State shall obtain and file with the local registrar of the district in which the death occurs, a certificate of death.[14]

"When the death occurs in a hospital or other institution or place, other than the home of the deceased, a statement of the length of time at place of death . . ." is to be made.[14]

Any health officer shall have the right to report to the board of county commissioners of his county any person afflicted with tuberculosis whom he considers a menace to his family or other persons, and upon the approval of the board . . . have the power to remove said person and place him in a public sanatorium or hospital where he shall remain until discharged therefrom by the superintendent of such institution.[15]

Each superintendent shall give to the next of kin any immediate notice of his death, serious illness, or special change in his condition. On the death certificate the name, age, etc., is to be furnished to the proper clerk or health officer for registration.[16]

§ 477. **Mississippi.** It shall be the duty of any . . . maternity home or hospital of any nature . . . knowing of any inflammation of the eyes of the new-born, within six hours thereafter, to report such fact, as the State Board of Health shall direct, to the local health officer. . . .[17]

It is to be the duty of . . . persons in attendance on a case of childbirth in a maternity home, hospital, public or

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13 Minne. G. S. 1913, Public Health, p. 1028, § 4657; 1913, C. 579, § 9.

14 Minne. G. S. 1913, Public Health, p. 1026, § 4652.

15 Minne. G. S. 1913, Public Health, p. 1032, § 4678; Laws 1913, C. 434, § 3.

16 Minne. G. S. 1913, Board of Control, p. 922, § 4092.

17 Miss. Code 1917, Health and Quarantine, p. 2248, Sec. 4876, and Sec. 4879.

charitable institution, in every infant immediately after birth, to use some prophylactic against the inflammation of the eyes of the new-born and to make a record of the prophylactic used. . . .[18]

A bureau of vital statistics is to be established by the State Board of Health which is to provide an adequate system for the registration of births and deaths.[19]

§ 478. **Missouri.** All superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in, or other institutions, public or private, to which persons resort for treatment of disease, confinement, or are committed by process of law, are hereby required to make a record of all the personal and statistical particulars relative to the inmates in their institutions . . . as directed by the State Registrar. . . . The information is to be obtained from individuals or friends.[20]

The attendant physician or midwife reports the birth to the local registrar of the district, or, if there be none such, the parents, householder, owner of the premises, the manager or superintendent of public or private institutions in which the birth occurred, is to notify the local registrar of the birth within ten days after it occurred.[21]

§ 479. **Montana.** All superintendents or managers, or other persons in charge of hospitals or lying-in institutions, public or private, to which persons resort for the treatment of disease, confinement, or are committed by process of law, are hereby required to make a record of all personal and statistical particulars relative to inmates in their institutions. . . . Such records are thereafter to be made at the time of admission.[1]

Every superintendent or manager of a hospital, dispensary, charitable, or penal institution, in which there is a case of venereal disease, is to keep a record thereof which shall show the name and address or the office number, age, sex, color, and occupation of the diseased person and the date of onset of the disease, and the probable source of infection.

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[18] Same, Miss. Code 1917, p. 2248, Sec. 4876, and Sec. 4879.

[19] 1917, Anno. Code, Sec. 4868.

[20] Missouri S. 1900, C. 53, Art. 2, Registration of Births and Deaths, § 6680. Laws 1909, p. 538.

[21] Rev. Stats. 1919, Sec. 5808.

[1] Mont. Rev. C. 1907, Pt. II, title VII, C. III, Art. I, p. 508. State Bureau of Vital Statistics, § 1778; Laws 1907, § 15, C. 25.

Each name so entered is to be assigned a number and a report in writing shall immediately be made to the local or county health officer giving the number assigned, etc.[2]

A person may without permit purchase and use intoxicating liquors for medicinal purposes, when prescribed by a physician, and any person who, in the opinion of the Secretary of State, is conducting a bona fide hospital or sanatorium engaged in the treatment of persons suffering from alcoholism may, under such rules, regulations, and conditions as the Secretary of State shall prescribe, purchase and use, in accordance with the methods in use in such institutions, the liquor to be administered under the direction of a duly qualified physician employed by the institution.[3]

Births and deaths are to be filed by the attendant physician. If there is none attending, the undertaker in case of death, and the father, householder, or owner of the premises, or the head of the hospital or institution in case of birth is to file a certificate within ten days with the local health officer.[4]

§ 480. **Nebraska.** The State Department of Health is to provide a system for the registration of births and deaths. Maternity homes and lying-in hospitals and places used as such are to report to the department quarterly on the first day of January, April, July, and October, the sex and date of birth of all children born in their respective institutions during the preceding quarter. The report is also to show the names and addresses of the parents and attending physicians.[5]

A birth which takes place in a maternity home or maternity boarding house, or home for the care of infants or lying-in hospital, shall be attended by a legally qualified physician, who shall forthwith report it to the board of health of the city or village in which the home is located. Notice is to be given of deaths also.[6]

A person who holds a license for keeping a maternity home, shall keep a record in the form to be prescribed by the Department of Public Welfare, wherein the licensee shall

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2 Montana S. L. 1919, C. 106, p. 204.

3 Laws 1921, C. 9, p. 737, Sec. 5.

4 Code 1907, Secs. 1771, 1772; L. 1907, C. 25, Sec. 25.

5 Laws 1919, C. 190, Sec. 12.

6 Same, p. 787, Secs. 6 and 7.

enter the names and addresses of physicians attending at births, the name, age, and sex of children born on the premises or brought thereto, and the age of the child who is taken away, together with the name and residence of the person taking the child away.[7]

§ 481. **Nevada.** It is the duty of any physician, surgeon, obstetrician, midwife, nurse, maternity home, or hospital of any nature, etc., attendant on or assisting in any way whatsoever any infant or its mother any time within two weeks after childbirth, which, knowing the existence of ophthalmia neonatorum to exist, to immediately report such fact in writing to the local health officer of the county, city, town, or district, etc.

The provisions of the state prohibition act are not to prevent the manufacture and sale to hospitals approved and designated by a certificate of the State Board of Health for scientific and mechanical purposes.[8]

If there is no attending physician or midwife at the birth of a child, the parents, householder, or owner of the premises, manager or superintendent of the public or private institution in which the birth has occurred, is to notify the local health officer of the fact.[9]

§ 482. **New Hampshire.** The reporting of births and deaths, contagious diseases, ophthalmia neonatorum, etc., is all in the hands of physicians.[10]

It is the duty of every officer having charge for the time being of each and every hospital, dispensary, asylum, or other public or private institution in the State, to report in like manner, the name, age, sex, color, occupation, and last address of every person who has come under his observation within one week of such time, who, in his opinion, is infected with pulmonary or other form of tuberculosis.[11]

§ 483. **New Jersey.** Every physician, superintendent, or other person having control or supervision over any state, county, or municipal hospital, sanatorium, or other public or private institution in which any person suffering from any of the communicable diseases named . . . is received for

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7 Same, Sec. 7.
8 Stats. 1921, C. 219, p. 331.
9 Rev. Laws 1912, Sec. 2964.
10 P. S., Ch. 173, etc.
11 P. S. Sup. 224; Laws 1911, Ch. 6, Sec. 1.

care or treatment, shall, within twenty-four hours . . . report such sickness to the secretary or clerk of the local board of health. . . .[12]

Every physician, superintendent, or other person having control or supervision over any state, county, or municipal hospital, sanatorium, or public or private institution in which any person suffering from or infected with a venereal disease . . . shall immediately . . . report such case to the Department of Health of this State.[13]

In case no physician or midwife is in attendance upon the birth, the father or mother of the child, or the manager or superintendent of the public or private institution where the birth occurred, each in the order named, is to file such certificate within said period with the local registrar. . . .[14]

It is lawful to sell liquor for medicinal purposes.[15]

§ 485. **New York.** It shall also be the duty of the chief officer having charge for the time being of any hospital . . . or other similar public or private institution, to report the name, age, sex, color, occupation, place where last employed, if known, and previous address of every patient having tuberculosis who comes into his care or under his observation, within twenty-four hours thereafter to the health officer of the city, town, or village in which said patient resided immediately previous to admission to said institution. . . .[16]

In each case where there is no physician, midwife, or person acting as midwife, in attendance upon the birth, it is the duty of the manager or superintendent of the public or private institution where the birth occurred, within five days, to report to the local registrar the fact of the birth.[17]

A hospital, sanatorium, or other institution maintained by the United States or the State, or any of its political sub-

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12 New Jersey Laws 1912, C. 131, p. 192; Supplement to "An act for the protection of the public health," March 22, 1895, Sec. 1.

13 New Jersey Laws 1917, C. 232, p. 787, amending act . . . creating State Department of Health . . . approved April 14, 1915.

14 New Jersey Laws 1920, C. 99, p. 197. An act relating to vital statistics and concerning births and deaths, Sec. 10.

15 1911-1924, Cumulative Supplement to Compiled Statutes of New Jersey, Sec. 100-203.

16 New York Laws 1916, C. 370, p. 984, amending L. 1909, C. 49, § 320 amended, § 320. Same, 1914, C. 318, p. 913.

17 N. Y. Sup. 1913, p. 2123, Registration of births; L. 1913, C. 619, § 382.

divisions, or a public hospital or other institution in which persons are treated for disability or disease other than drug addiction or inebriety, or a private hospital or institution registered with the department . . . may, under the supervision of a physician, administer cocaine or opium or its derivatives to inmates who are under treatment as patients.[18]

Cocaine or opium or its derivatives is not to be administered in nor shall any person be treated for inebriety or drug addiction in a private hospital, sanitarium, institution, or place . . . unless a certificate of authority shall first have been procured from the department authorizing the same and then only so long as such certificate shall remain unrevoked.[19]

Each hospital, sanatorium, or other institution authorized to administer cocaine or opium or its derivatives is to keep a record of each purchase or receipt, its gross amount, etc.[20]

§ 486. **North Carolina.** All superintendents, managers, or other persons in charge of hospitals, almshouses, lying-in, or other institutions, public or private, to which persons resort for the treatment of diseases, confinement, or are committed by process of law, shall make a record of all personal and statistical particulars relative to the inmates in their institutions . . . as directed by the State Registrar; and thereafter such record shall be made by them for all future inmates at the time of their admittance. In case of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information shall be obtained from the individual himself, if it is practicable to do so, and when they cannot be so obtained, in as complete manner as possible from relatives, friends, or other persons acquainted with the facts.[21]

Ophthalmia neonatorum is described, and is to be reported. The fee for reporting is fifty cents.[1]

Any superintendent or manager of a hospital, dispensary, or charitable institution in which there is a case of venereal disease, shall make a report of such case to the health authori-

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[18] N. Y. Laws 1918, C. 639, p. 2035, § 431.

[19] Same, Sec. 432.

[20] Same, Sec. 434, Subsec. 5.

[21] North Carolina Consol. Stats. 1919, Sec. 7104; 1913, C. 109, Sec. 16.

[1] N. C. Consol. Stats. 1919, Sec. 7180; 1917, C. 257, Sec. 1.

ties according to such form and manner as the State Board of Health shall direct.[2]

The State Board of Health has charge of the registration of births and deaths.[3]

The prohibition act is not to apply to wines and liquors required and used by hospitals or sanatoria, bona fide, established and maintained for the treatment of patients addicted to the use of liquor, morphine, opium, cocaine, or other deleterious drugs, when the same are administered to patients actually in such hospitals or sanatoria for treatment, and when the same are administered as an essential part of the particular system or method of treatment and exclusively under the direction of a duly licensed and registered physician of good moral character and standing.[4]

§ 487. **North Dakota.** Every person, firm, corporation, or association that conducts or holds a license to conduct a maternity hospital, shall, upon the admission of any woman or patient, make a report in a form to be prescribed by the Judge of the District Court, wherein shall be entered the true and correct name, together with all her places of residence. Within twenty-four hours after her admission, a report of the admission is to be made to the Judge of the District Court. Every birth which takes place in the hospital is to be attended by a legally qualified physician or licensed midwife attending the birth. A copy of the record is to be sent to the Judge of the District Court within two days after the child's birth.[5]

All superintendents, managers, or persons in charge of hospitals, lying-in, or other institutions, public or private, to which persons resort for the treatment of disease, confinement, or are committed by process of law, are hereby required to make a record of all personal and statistical particulars relative to inmates . . . as directed by the State Registrar, and thereafter . . . for all future inmates at the time of admission . . . secured in as complete manner as possible from . . . persons acquainted with the facts.[6]

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2 N. C. Consol. Stats. 1919, Sec. 7192; Laws 1919, C. 206, Sec. 2.

3 Consol. Stats. 1919, Sec. 7086.

4 North Carolina Consol. Stats. 1919, Sec. 3392.

5 N. D. L. 1915, C. 183, p. 262, Sec. 8.

6 N. D. Comp. Laws 1913, p. 114, Hospitals to keep record, § 450; 1907, C. 270, § 17.

Any superintendent or manager of a hospital, dispensary, or charitable or penal institution in which there is a case of venereal disease, shall make a report of such case to the health authorities according to such form and manner as the State Board of Health shall direct.[7]

If there is no attending physician or midwife, the manager or superintendent of public or private institution in which birth occurred is to file the certificate of birth with the local registrar within three days after birth.[8]

§ 488. **Ohio.** No officer or authorized agent of the State Board of Health or the boards of health of the cities, villages, or townships where such licensed homes or hospitals are located, or a keeper of such house or hospitals, shall divulge or disclose the contents of the records or of the particulars entered therein, except upon inquiry before a court of law, at a coroner's inquest, or for the information of the State Board of Health, or the board of health of the city, village, or township in which the house or hospital is located.[9]

The Commissioner of Health has the power to define and classify hospitals and dispensaries. Within thirty days after the taking effect of the act, and annually thereafter, every hospital and dispensary, public or private, is to register with, and report to, the State Department of Health, on forms furnished by the Commissioner of Health, such information as he may prescribe.[10]

Certificates of birth and death are to be filed by the medical attendant or midwife with the local registrar. In the case of births without such attendance, the parents, householder, or owner of the premises, manager or superintendent of public or private institutions in which the birth occurred, shall notify the local registrar within ten days thereafter of such birth having occurred.[11]

It is the duty of any physician, surgeon, obstetrician, midwife, nurse, maternity home, or hospital of any nature, etc., assisting in any way whatsoever any infant or mother

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7 N. D. Laws 1919, Ch. 237, p. 481.

8 N. D. Comp. Laws 1913, p. 113, § 446; Laws 1907, C. 270, § 13.

9 Ohio 1921 Gen. Code (Throckmorton), Sec. 6274.

10 Ohio 1921 Gen. Code (Throckmorton), Sec. 1236-6; 108 V., Pt. 1, 46.

11 1921 Code (Throckmorton), Sec. 218.

at childbirth or two weeks thereafter, knowing tne existence of ophthalmia neonatorum, to report such fact within six hours.[12]

A birth which takes place in a maternity boarding house or lying-in hospital is to be attended by a legally qualified physician who is to report it to the board of health of the city, village, or township in which the maternity boarding house or lying-in hospital is located.[13]

§ 489. **Oklahoma.** Superintendents or persons in charge of almshouses, hospitals, lying-in, or other institutions, public or private, to which persons resort for treatment of diseases, confinement, or are committed by process of law, are to make a record of all the personal and statistical particulars relative to the inmates in the institution, as directed by the State Registrar, and thereafter for all future inmates. . . .[14]

Any and all institutions, whether penal or eleemosynary, and whether public or private or free or for pay, shall make and preserve for a period of at least one year, a record showing the name, age, sex, color, nationality, and place of residence of all infected persons, the inmates of such institution and shall submit such record at all reasonable hours to the inspector of the duly accredited health authorities. (Act to prevent and stamp out venereal diseases, etc.)[15]

It is the duty of any physician, surgeon, obstetrician, midwife, manager, or person in charge of a maternity home, or hospital or other public or private institution, etc., attendant on or assisting in any way whatsoever an infant or mother within twenty-four hours after childbirth, to report within six hours the existence of ophthalmia neonatorum to the local health officer.[16]

The State Commissioner of Health has charge of the registration of vital statistics which is done by the physician or midwife. Where there is no attendant at the birth of a child, the parents, householder, or owner of the premises where the birth occurred or the manager or superintendent

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12 Ohio 1921 Gen. Code (Throckmorton), Sec. 1248-2.

13 Ohio General Code 1921 (Throckmorton), Sec. 6265.

14 Okla. Supp. (Burns), 1918, C. 67, Art. XI-D, p. 883, § 6985 Z 15; S. L. 1919, p. 287, Sec. 17.

15 Oklahoma S. L. 1919, No. 43, p. 33, Sec. 7.

16 Okla. S. L. 1921, C. 4, p. 4, Sec. 2.

of the public or private institution where it occurred is to report the birth to the local registrar within ten days.[17]

The distribution of narcotic drugs is in the hands of physicians.[18]

§ 490. **Oregon.** If there is no attending physician or midwife, then it is the duty of the manager or superintendent of a public or private institution in which the birth occurred, to notify the local registrar, within ten days after birth, of the fact. . . .[19]

Any superintendent or manager of a hospital or charitable . . . institution in which there is a case of venereal disease, is to make a report of the case to the health authorities in accordance with the rules and regulations of the State Board of Health.[20]

It is the duty of all physicians, and all other persons practicing the art or science of healing, and all persons having the care of persons affected with any communicable disease, immediately upon the development of the disease so as to show its communicable character, to report same to the local health officer as required by the State Board of Health.[1]

§ 491. **Pennsylvania.** All superintendents or managers or other persons in charge of hospitals, almshouses, lying-in, or other institutions, public or private, to which persons resort for the treatment of disease, confinement, or are committed by process of law, are required to make a record of all personal and statistical particulars relative to the inmates . . . as directed by the State Registrar, and . . . for all future inmates at the time of their admission. . . .[2]

The act relating to the dispensing of drugs is not to apply to the treatment of habitual users of drugs in public hospitals, sanatoriums . . . or public institutions.[3]

The State Department of Health has charge of the registration of vital statistics. In case there is no medical attend-

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17 Okla. 1918 Supp. Burns, Sec. 6985 y; 1915, C. 268, p. 381, Sec. 12.

18 S. L. 1919, No. 168, p. 95.

19 Stats. 1920 (Olson), Sec. 8498.

20 Oregon Laws 1919, C. 264, p. 407, Secs. 5, 7.

1 Oregon 1921 Laws (Olson), Sec. 8389; L. 1919, C. 264, Sec. 22.

2 Penna. Laws 1915, Act 402, p. 908, Sec. 17. Same provision, Stats. 1920 (West), Sec. 9001.

3 Penna. Stats. 1920 (West), p. 892, Druggists and Drugs, Sec. 9368; 1917, July 11; P. L. 758, Sec. 11.

ance at the birth of a child, the parents, householder, or owner of the premises, manager or superintendent of the public or private institution in which the birth occurred, is to notify the local registrar within ten days thereafter of the birth.[4]

The proprietor of every hospital, hospital ward, or other private place for lying-in purposes, to which a license has been granted, shall, within five days after the birth of any child, report to the local board of health the date and place of such birth, the name, sex, and color of the child.[5]

§ 492. **Rhode Island.** The Penal and Charitable Commission is to provide for the care and physical welfare of all inmates, prisoners, patients, and pupils. It may authorize and direct an examination by the attending physician to ascertain the existence of any dangerous, infectious, or contagious disease, including syphilis in the infectious stages, and gonorrhea, and a report is to be made to the State Board of Health.[6]

For statistical purposes of the State Board of Health, the Commission is to keep records of all cases of venereal diseases in the institutions, but the records are not open to public inspection, etc.[6]

The provisions relating to the sales of certain narcotics are not to apply to the sales to hospitals or public institutions. Certain narcotic drugs may be sold to any incorporated hospital, college, or scientific institution, but the substances or preparations are to be sold only upon the written order of an incorporated hospital, college, or scientific institution, duly signed by its superintendent or official in immediate charge.[7]

The secretary of the State Board of Health is to furnish blanks of births, deaths, etc., to clergymen, physicians, institutions, towns, cities, etc.[8]

§ 493. **South Carolina.** Any superintendent or manager of a hospital, dispensary, or charitable or penal institution

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4 Stats. 1920 (West), Sec. 8984.

5 Penna. Stats. 1920 (West), 14505; 1893, April 26; P. L. 24, Sec. 2.

6 1923, Gen. Laws, Sec. 6523, et seq., R. I. 1918, Acts and Resolves, Ch. 1613, p. 14, Sec. 1.

7 R. I. Gen. Laws 1909, C. 178, title XVII, p. 591, Sec. 13, Sale of narcotics, as amended 1918, Ch. 1674, p. 149, Sec. 4.

8 1910, Acts and Resolves, Ch. 575, p. 123, amending G. L., Ch. 121, Sec. 3.

in which there is a case of venereal disease, is to make a report of the case to the health authorities according to the form and manner the State Board of Health directs.[9] The State Board of Health is to create a Bureau of Vital Statistics, prescribe forms, rules, regulations, etc.[10]

Ophthalmia neonatorum is to be reported to the local board of health by the physician, midwife, or person having charge of the infant.[11]

The Drug Act is in the hands of the physicians.[12]

§ 494. **South Dakota.** Every physician or other authorized person attending the birth of a child within thirty days thereafter is to make a record of required facts upon blanks provided by the State. Where there is no such attendant the parent, the oldest person next of kin, or householder of the house in which the birth occurs, is to report the necessary facts to the justice of the peace who in turn reports to the Clerk of Courts.[13]

The State Board of Health has power to regulate the treatment in hospitals of persons suffering from communicable disease, and the reporting of sickness and deaths therefrom.[14]

Any superintendent or manager of a hospital, dispensary, or charitable or penal institution in which there is a case of venereal disease, is to make a report of the case to the health authorities according to the form and manner of the State Board of Health.[15]

§ 495. **Tennessee.** The State Board of Health has charge of the registration of births and deaths which are to be reported by the physician or midwife attending, or if none attends, then the parents, householder, or owner of the premises, or manager or superintendent of the public or private institution is to notify the local registrar of such birth.[16]

Every superintendent or manager of a clinic, dispensary, charitable or penal institution in which there is a case of venereal disease, is to report the case immediately, in writing,

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9 S. C. Stats. 1919, No. 17, p. 30.
10 S. C. 1914, Ex. Sess. Acts, p. 29, No. 26.
11 S. C. Code 1912 (Criminal Vol. II), Sec. 443.
12 Code 1912.
13 Rev. Code 1919, Sec. 9899.
14 S. D. 1919, Rev. Code, Sec. 7667.
15 S. D. 1919, S. L., Ch. 284, p. 331.
16 Tenn. P. A. 1913, C. No. 30, p. 64.

on a form supplied by the State Board of Health to the municipal or county health officer having jurisdiction.[17]

Ophthalmia neonatorum is to be treated and reported by any physician, nurse, midwife, or other person having the care of the infant.[18]

§ 496. **Texas.** The reporting of contagious diseases, ophthalmia neonatorum, births, and deaths, etc., are all in the hands of physicians, midwives, householders, etc.[19] If the deceased died in a hospital or other institution, the person acting as undertaker shall present the certificate of death to the superintendent or head of such institution for the special information indicated on the blank for such cases.[20]

§ 497. **Utah.** The person or persons in charge of a maternity or lying-in hospital licensed by the State Board of Health is to keep on hand an accurate and complete register of all patients and of all births and deaths occurring on the premises, giving the date of entry of each patient, the date of birth, the age of all children dying therein, and women. The person or persons in charge are to furnish to the officer authorized by law to receive them all of the particulars required by law to be furnished for the due regulation of each birth or death occurring on said premises.[21]

Registration of births and deaths is in the hands of physicians and midwives attendant. If none of these attend the birth, the father, householder, or owner of premises, or manager or superintendent of the institution in which the birth occurred is to file a certificate of birth with the local registrar within three days after birth.[1]

Any superintendent or manager of a hospital, dispensary, or charitable, or penal institution in which there is a case of venereal disease, is to make a report of the case to the health authorities according to such form and manner as the State Board of Health shall direct.[2]

Physicians and midwives are to report ophthalmia neonatorium.[3]

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17 Tenn. 1921, P. A. No. 106, p. 211.

18 Tenn. P. A. 1915, C. No. 52, p. 139.

19 1911, Gen. Laws, C. 95, p. 173.

20 Same rule 48.

21 Utah Laws 1919, Ch. 48, p. 128, Sec. 4.

1 Utah 1917, Comp. Laws, Secs. 5050, 5046, etc.

2 Utah Laws 1919, Ch. 52, p. 135.

3 Utah 1917, Comp. Laws, Sec. 2754.

§ 498. **Vermont.** The superintendent, manager or matron of each home, hospital, or retreat in this State, for the care and education of minors, is to keep a record of each minor placed therein, which shall include, so far as can be ascertained, the name, age, and date of the registration of such minor, and the name and residence of his parents, and is also to include the date of his leaving the institution and the name of the person into whose family or employ such minor goes, after so leaving. Such information is to be kept in a book provided for that purpose by the Secretary of State, and is to be available to the courts of the State upon their order.[4]

The superintendent or other officer in charge of public institutions such as hospitals, dispensaries, clinics, homes, asylums, charitable and correctional institutions, is to report promptly to the State Board of Health the name, sex, age, nationality, race, marital state, and address of every charitable patient under observation suffering from venereal diseases in any form, stating the name, character, stage, and duration of the infection, and, if obtainable, the date and source of contracting the same.[5]

All information and reports in connection with persons suffering from such diseases shall be regarded as absolutely confidential and shall not be accessible to the public, nor shall such reports be defined as public records. . . .[6]

The physician, midwife, or head of family is to report births.[7]

§ 499. **Virginia.** Every superintendent or manager of a hospital, dispensary, or charitable or penal institution, in which there is a case of venereal disease, is to report the case immediately in writing to the State Board of Health, stating the name and address, or the office number, age, sex, color, and occupation of the diseased person, the date of onset of disease, and probable source of infection. These reports are confidential and to be kept inaccessible to the public except in so far as publicity may attend the performance of duties imposed by the laws of the State.[8]

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[4] Vermont 1917, Gen. Laws, title 18, C. 171, p. 658, Sec. 3822.

[5] Vermont 1917, Gen. Laws, Sec. 6249.

[6] 1915, No. 198; 1917, No. 58 and No. 238; 1912, No. 218; Vermont 1917, Gen. Laws, Sec. 3785.

[7] Vermont 1917, Gen. Laws, Sec. 3773.

[8] Virginia Acts 1920, C. 364, p. 548. Venereal diseases.

It is the duty of any physician, surgeon, obstetrician, midwife, nurse, maternity home, or hospital of any nature . . . assisting any infant or mother at childbirth, knowing of the existence of ophthalmia neonatorum, to report immediately such fact as the State Board of Health shall direct, to the local health officer.[9]

Nothing in this act is to prevent the superintendent of a hospital from ordering, purchasing, and receiving ardent spirits, etc., . . . for the use of the hospital, and nothing shall prevent the common carriers from transporting and delivering such ardent spirits and alcohol to such hospitals or laboratories having license to order and receive the same from the Commissioner.[10]

The supervision of the registration of vital statistics is in the hands of the State Board of Health, the bureau of vital statistics which makes rules, regulations, etc.[11]

§ 500. **Washington.** On the first day of July and quarterly thereafter the board of managers of county tuberculosis hospitals are to certify to the State Auditor and the county auditor the number of persons cared for at public expense in the institution, the date of admission for each person, the length of treatment, etc.[12]

Under the provisions relating to the exemptions of hospitals from taxation it is provided that the superintendent or manager of the institution claiming exemption is to make an annual report under oath to the State Board of Health of its receipts and disbursements, specifying in detail the sources from which these receipts have been derived and the object of their disbursement. In this report is to be given a full and complete statement of the vital statistics for the use and information of the State Board of Health, who may publish the same in its annual report.[13]

The Director of Health with the Registrar of Vital Statistics has charge of the registration of births and deaths.[14]

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9 Virginia Acts 1918, Ch. 423, p. 772, Sec. 2.

10 Virginia Acts 1920, Ch. 484, p. 806, amending previous act.

11 Virginia Acts 1914, Ch. 83, p. 140.

12 1915 S. L., Ch. 81, p. 254; Ch. 131, p. 359, Sec. 9048-4.

13 S. L. 1921, Ch. 7, Sec. 57.

14 S. L. 1921, Ch. 7, Sec. 59, Subsec. (2).

The control and regulation of venereal disease is in charge of the State Board of Health and local health officers.[15]

§ 501. **West Virginia.** An act for the prevention of blindness from ophthalmia neonatorum states that it is to be the duty of any . . . maternity home or hospital of any nature . . . knowing the condition hereinbefore defined to exist, to report immediately such fact in writing, to the local health officer. . . .[16]

Venereal diseases are to be reported by physicians.[17]

Births and deaths are to be reported by physicians or midwives. If there is no such attendant at birth, the parents or manager or superintendent of the public or private institution where the birth occurred is to report same to the local registrar within ten days.[18]

§ 502. **Wisconsin.** Births and deaths are reported by the physician or midwife attending. If there is no such attendant at birth, then the father, the householder, or owner of the premises, or manager or superintendent of a public or private institution in which the birth occurred, is to file a satisfactory certificate of birth with the local registrar within five days.[19]

Venereal diseases are to be reported to the State Board of Health by the physicians.[20] The same provision is made for tuberculosis and other communicable diseases.[1] It is also made the duty of every person, owner, agent, manager, principal, or superintendent of any public or private institution or dispensary in any such town, incorporated village, or city to make a report of infectious diseases.

In the case of tuberculosis such persons are to report to the local Department of Health, in writing, or cause such report to be made by some proper and competent person, the name, age, sex, occupation and latest address of every person afflicted with tuberculosis, who is in their care, or who has come under their observation within one week of such time.[2] These reports of tuberculosis are to be confidential to the

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15 S. L. 1919, Ch. 114, p. 277.
16 West Virginia Acts 1919, C. 125, p. 439.
17 Acts 1921, C. 138.
18 Acts 1921, Ch. 137, Sec. 13.
19 Stats. 1919, Secs. 1022-28, 29.
20 Laws 1919, Ch. 331.
1 Stats. 1919, Sec. 1416-1.
2 Same, Sec. 1416-4.

extent that the name or address of the patient is not to be published by any newspaper, magazine, or other paper or publication of general or special circulation.[3]

The reports concerning the existence of ophthalmia neonatorum, and the use of silver nitrate are in the hands of physicians and midwives.[4]

§ 503. **Wyoming.** It is the duty of every physician . . . or in the absence of such physician or midwife . . . the superintendent of the institution in which the birth occurred, within ten days thereafter, to file with the local registrar of the district in which such birth occurred, a certificate of same.[5]

The act relating to the sale of narcotic drugs is not to apply to any state, county, or private hospitals.[6]

The State Board of Health may require all proper reports and information from all public or private dispensaries, hospitals, asylums, infirmaries, etc.[7]

The registration of births and deaths is by physicians and midwives, to be under the supervision of the State Board of Health, bureau of vital statistics.[8]

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3 Same, 1416-4-3.
4 Stats. 1919, Sec. 1409-a-1.
5 Wyoming Laws 1913, C. 70, p. 66. Birth certificates, Sec. 2960.
6 Comp. Stats. 1920, Sec. 3570.
7 Comp. Stats. 1920, Sec. 3598.
8 Same, Sec. 3643.

APPENDIX

SUMMARY OF LEGISLATION AFFECTING HOSPITALS

The following summary of legislation has been divided into two general portions relating to public and private hospitals. In general, a hospital may be defined as "an institution or establishment for the care of the sick or wounded, or those who require medical treatment." It may be used to designate a permanent retreat for the poor, infirm, or insane, or an institution for the temporary reception and care of the sick.

In the organization of the material these two general divisions have been made; under the former have been considered the federal, state, and local (county or city) organization of hospitals providing general care for the sick or special care for tuberculosis, contagious disease, children's disorders, etc. No attempt has been made to include all legislation, but only to give a definite idea of the powers, type of activity, and limitations established by statute.

The subject of private hospitals has been developed under various subheadings, which will be considered later, such as incorporation, licensing and inspection, tax exemption, liability for nuisance, negligence, etc.

I. PUBLIC HOSPITALS

A hospital created and endowed by the government for general charity or for the care of the sick may be termed for our purpose, a public corporation or institution, that is, one devoted chiefly to public uses and purposes and owned by the public. Such institutions may then be federal, state, or local in character.

(A) Federal Hospitals

In the ordinary sense, the Federal Government does not maintain public hospitals for the use of the general public,

but it does support hospitals caring for its officers and employees; that is, the army, navy, and marine hospitals, and hospitals for special purposes—the care of tuberculosis, leprosy, insane, sick immigrants, and other special institutions.

1. **Marine Hospitals.** The President has been authorized to receive donations of real and personal property for the erection or support of hospitals for sick and disabled seamen. This is known as the Marine Hospital Fund, and by special provision persons employed on canal boats in coastwise trade are prohibited from its benefits. The term "seaman" includes "any person employed on board in the care, preservation, or navigation of any vessel, or in service on board, of those engaged in such care, preservation, or navigation." (3 Fed. Stats. Ann. (2d Ed.), Sec. 4801). Life-saving service employees and officers and employees of the Public Health Service may be admitted to Marine hospitals. Ten persons may be admitted to the hospitals for the study of "infectious diseases or other diseases affecting public health." (3 Fed. Stat. Ann. (2d Ed.), 571.)

2. **Navy Hospitals.** The Secretary of the Navy has general charge and superintendence of navy hospitals. (Same, Sec. 4807.) He is authorized to procure sites, erect buildings if authorized by Congress, and to provide as one of the establishments, a permanent asylum for decrepit naval officers, seamen, and marines. He also prescribes rules and regulations governing the same. (Same, 572.)

3. **Public Health Service.** The term "Marine Hospital Service" was changed to Public Health and Marine Hospital Service (1902) and later to Public Health Service (1912). Appropriations for the expenses of the Public Health Service include the maintenance, etc., of marine hospitals, medical examinations, the care of seamen, the care and treatment of other persons entitled to relief, etc., and are made usually in the annual sundry appropriation acts.

Among the institutions established and maintained by the Federal Government are the following:

Tuberculosis Hospital at Fort Bayard, N. M., for officers and men of Army, Navy, and Marine Corps.

Army and Navy Hospital, Hot Springs, Arkansas.

4. **Special Hospitals and Homes.** Soldiers' homes at

Washington, D. C., under the direction of the Board of Commissions, the Commissary General of Subsistence, the Surgeon General, the Adjutant General. Officers of the home are appointed and removed by the Secretary of War.

National Home for Disabled Volunteer Soldiers, Milwaukee County, Wisconsin; Leavenworth County, Kansas, etc. The President, Secretary of War, and "such other persons as have been or from time to time may be associated with them" constitute the board of managers. Officers and soldiers of the Civil War, the War of 1812, the Mexican War, etc., are entitled to admission. All inmates are subject to the rules and articles of war as if in the Army.

Saint Elizabeth's Hospital, Washington, D. C., provides for "the most humane care and enlightened curative treatment of the insane of the Army and Navy of the United States and the District of Columbia." On order of the Secretary of the Interior, indigent insane of the District may be admitted. The Secretary of the Interior has general supervision over the hospitals.

The Freedmen's Hospital and Asylum in the District of Columbia was under the control and supervision of the Secretary of War. Later estimates for expenses and maintenance were submitted by the Secretary of the Interior. (37 Fed. Stats. Ann. (2d Ed.), 622.)

The Government Hospital for the Insane, the Washington Hospital for Foundlings, the Columbia Institution for the Deaf and Dumb, and the Freedmen's Hospital and Asylum, are charitable or eleemosynary institutions under the general supervision of the Board of Charities of the District of Columbia. (31 Stat. 664.)

The Secretary of the Interior is authorized to erect hospitals for the treatment of Indians afflicted with tuberculosis, trachoma, or other contagious or infectious diseases if in his judgment it is necessary. He is to report such expenditures annually to Congress. (3 Fed. Stat. Ann. (2d Ed.), 804.)

A laboratory for the study of leprosy was established in Hawaii (1905) under the direction of the Public Health and Marine Hospital Service.

The supervising Surgeon General of the Public Health Service may, with the approval of the Secretary of the Treas-

ury, establish quarantine stations at certain points near the coastline of the United States and elsewhere, where infected vessels, bound for any port in the United States, may be detained or sent for the purpose of being disinfected and discharged if necessary, their sick to be treated in hospitals until all danger of infection or contagion has been removed. (34 Stat. 199.)

The Public Health Service is authorized to provide hospital and sanitarium facilities for the care and treatment of discharged sick and disabled soldiers, sailors, and marines, Army and Navy nurses (male and female), and patients of the War Risk Insurance Bureau. (P. A. No. 326, 65th Congress.)

The immigration laws provide for the temporary detention and admission or deportation, in case of contagious disorder, of the wife or minor child of an alien resident who has filed his declaration of intention to become a citizen. Such persons cannot be admitted or deported until it is ascertained whether they can be permitted to land without danger to other persons. (8 U. S. Comp. Stats. Ann. 1916, Sec. 4286.)

(B) State Hospitals

Hospitals owned, organized, and conducted by the State are public corporations or governmental agencies. The provision made by the State for the care of the insane will not be herein included. After about 1800 the states began taking over the care of the insane, and at this time forty-eight states have institutions of their own. Some of the states made provision for particular groups of the insane: Minnesota, for the dangerous insane committed from courts of criminal jurisdiction; Maryland, for criminal insane convicts; Massachusetts, New Jersey, Pennsylvania, and Wyoming, for insane criminals; New York, discharged soldiers, sailors, and marines from the State of New York, suffering from mental disease; Texas, for the negro insane; and Wisconsin, for the tubercular insane. North Carolina has abolished its separate hospital for insane convicts. (P. L. 1923, Ch. 165.)

1. **Tuberculosis Hospitals.** Arizona, California, Colorado, Illinois, Nevada, Rhode Island, South Carolina, Utah, and Wyoming, either make no provision for the care of

tubercular persons or provide that care be made through the erection and maintenance of county hospitals.

Oklahoma authorizes the Governor to provide a suitable site for the establishment of a sanatorium for consumption and tuberculosis. (G. A. 1919, p. 752.) Connecticut states that, as the necessity arises, the State Tuberculosis Commission is to select "sanatoriums for the care and treatment of persons suffering from tuberculosis." (G. S. 1918, Sec. 2639.) Iowa provides care for the incipient pulmonary tuberculosis cases (Code 1919, Sec. 1929), and provides an additional department for the reception of persons afflicted with tuberculosis in advanced stages.

In Kentucky the powers of the State Tuberculosis Commission were transferred to the State Board of Health, Bureau of Tuberculosis, whose duty it is to encourage adequate provision for consumptives by the establishment of sanatoria, hospitals, and dispensaries. (Acts 1918, p. 290, 331-f.)

Maine provides sanatoria "in such districts of the State as shall seem best to serve the needs of the people for the care and treatment of persons afflicted with tuberculosis." Further, it is stated that "according to the capacity of the sanatorium, such patients shall be eligible for treatment in all stages of the disease." (R. S. 1916, p. 1630.)

Nebraska limits the reception of patients to those "with tuberculosis disease of the respiratory organs of a curable nature." (Ann. Stats. 1911, Sec. 9984.) New York also confines treatment to those with incipient tuberculosis.

North Carolina provides for the establishment of a sanatorium for the care of tubercular prisoners. (P. L. 1923, Ch. 127.)

The South Dakota State Sanatorium is under the charge and control of the Board of Charities and Correction for the care and treatment of persons with pulmonary tuberculosis in the incipient stage, for the education and instruction of such persons and others, and for the scientific research and study regarding the nature of such affliction and the discovering and development of remedies for the cure thereof." (Rev. Code 1919, Sec. 3539.)

West Virginia by joint resolution provided for the appointment of a committee to locate a site for a state institu-

tion for the care, instruction, and cure of persons suffering from tuberculosis. (Acts 1908, p. 250.)

Arkansas has established a state sanatorium for negroes to which patients may be sent on order of the county judge. (Acts 1923, Act 113.)

Delaware provides for the care and treatment of colored persons having tuberculosis and gives the State Tuberculosis Commission the power to erect additional buildings when proper and expedient. (Laws 1919, Ch. 57.)

Idaho divides the State into two tuberculosis hospital districts, creates a Tuberculosis Commission, and provides a special tax levy. (Stats. 1919, Ch. 53.)

Maryland amended a previous law and permits special facilities for colored persons with tuberculosis. (Law 1918 Ch. 148.)

Massachusetts has authorized the Board of Prison Commissioners to establish a hospital for prisoners with tuberculosis. (Supp. 1908, Ch. 225.)

Vermont provides that the State may establish tuberculosis hospitals or wards for the treatment of tuberculous patients in connection with any hospital in the State, whenever in the opinion of the Governor and the State Board of Health there is need for such hospital or wards. (General Laws 1917, Ch. 190.)

2. **Industrial Hospitals.** Some of the states make provision for special hospitals caring for particular groups of patients. Thus there have been established hospitals for persons injured in mines in Pennsylvania, Utah, West Virginia, and Wyoming. Wyoming specifies a general hospital established for the "sustenance, care, and medical and surgical attention for all miners who become disabled or incapacitated to labor while working in the mines of the State."

Oregon directs the State Industrial Accident Commission to set aside a certain amount from the industrial accident fund and to construct and equip an industrial and reconstruction hospital. (Laws 1919, Ch. 435.)

In Pennsylvania an incorporated hospital association is permitted to acquire by lease or purchase any state-owned hospital specially devoted to the reception, care, and treatment of injured persons, or of any state-owned general

medical and surgical hospital. When the negotiations are concluded, the transactions are to be approved by the Department of Public Welfare and the Governor. (Laws 1923, No. 279.)

3. **Special Hospitals for Crippled Children.**[1] Many of the states authorize the establishment of general hospitals for the care and treatment of sick, crippled, injured, deformed, or diseased children or adults who may be benefited by medical or surgical care in a hospital. Frequently this hospital is established and operated in connection with the State University as in Arkansas, Iowa, Indiana, Michigan, Minnesota, Kansas, Oklahoma, and Wisconsin. Illinois provides a surgical institute for children. (Stats. Callaghan, 1920, Sec. 1013.)

Florida arranges for such care under the supervision of the State Board of Health in any sanitarium or hospital in Florida for the care and treatment of children, maintenance to be paid out of the general appropriation. (Rev. Gen. Stats. 1920, Secs. 2292-2294.)

Illinois provides the Eye and Ear Infirmary "to give gratuitous board and medical and surgical treatment for the sick residents of Illinois who are afflicted with diseases of the eye and ear."

Maine designates certain amounts for the care of children and adults, including children under sixteen, in enumerated hospitals, with allowances also for maternity cases. (Laws 1923, Ch. 129.)

The Colorado General Hospital was created to care for the legal residents of the State afflicted "not with chronic illness, but with a malady, deformity, or ailment of a nature which can probably be remedied by hospital care and treatment" and financially unable to secure such care. The control of the hospital is in the hands of the Regents of the University and patients apply through the county commissioners for care. (S. L. 1923, Ch. 186.)

Nebraska provides a hospital for crippled, ruptured, and deformed children and those suffering from curable diseases under the control and administration of the Board of Health.

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[1] See p. 23, Municipalities, power to provide care.

New Jersey provides a hospital for the use of pupils in the School for Deaf Mutes under the State Board of Education. (P. L. 1897, p. 338.)

New York appropriates funds for the New York State Hospital for the Care of Crippled and Deformed Children. (Laws 1918, Ch. 151.) The State Orthopedic Hospital for Children at West Havershaw is continued for the care and treatment of any resident, indigent children, crippled or deformed or suffering from a disease from which they may be crippled or deformed. No incurable case is to be admitted. (Laws 1923, Ch. 367, Amending L. 1909, Ch. 57.)

North Dakota arranges care for children under eighteen by committing them after hearing to the temporary custody and care of the State Board of Administration, or to some suitable person, organization, and agency which is to assume care and secure necessary treatment "in any hospital within the State where medical and surgical service can be secured without charge." Charges are to be certified and approved by the District Court and thereupon made a charge against the county. (S. L. 1923, p. 219.)

Ohio provides for a commission to select lands, adopt plans, and make arrangements for the medical and surgical treatment of indigent, crippled, and deformed children of the State under eighteen years. (Laws 1917, p. 146.)

Pennsylvania provides care for dependent crippled children through commitment to the Department of Public Welfare by the Juvenile Court. The expense is borne by the county of residence. (Laws 1923, No. 276.)

In Oklahoma free medical and surgical treatment for children is provided at the University Hospital. Any judge sitting or acting as a juvenile court may, on his own motion, or on complaint filed, direct the county superintendent of health to examine, make, and file a report concerning the same. Charges are to be paid by the county and are not to exceed $15 per week. The child is sent to the hospital after due notice and hearing. (Acts 1923, Ch. 105.)

Virginia provides for the establishment of a hospital for the treatment of crippled and deformed children. (Acts 1918, Ch. 49.)

In Delaware the State Board of Health may erect tem-

porary wooden buildings or field hospitals for the care of persons with infectious or contagious disease. (R. C. 1915, Sec. 759.)

4. **Special Hospitals for Drug Addicts.** Drug addicts in Iowa are cared for in insane hospitals (Code 1913, Sec. 2 B, 10 A), and inebriates in the State Psychopathic Hospital (Acts 1919, Ch. 366). Massachusetts constructed a new hospital for dipsomaniacs (1910, Ch. 635); Minnesota, for inebriates (G. S. 1913, Sec. 4110, et seq). Texas refers persons afflicted with hydrophobia to the Pasteur Hospital, a department in connection with and under the management of the State Lunatic Asylum. (Civil Stats. Ann. 1913, Art. 166.)

Oklahoma has established a public hospital in connection with the plant and equipment of the medical department of the State University. (Burns Supp. 1918, Sec. 7970.)

Louisiana provides a State Charity Hospital in New Orleans maintained by the proceeds of certain license fees. (Stats. 1920, p. 211.)

The Southern Maryland Emergency Hospital is for the use of persons, white and colored, in need of hospital care and treatment. (Laws 1916, Ch. 251.) Mississippi has established a State Charity Hospital for "poor and needy persons" needing medical treatment. (Code 1917, Ch. 89.)

New Jersey permits the Home for Disabled Soldiers, Sailors, and Marines to be used for a hospital "in cases requiring surgical treatment or operations, considered suitable by the commandant and when the payment of expenses is guaranteed." (N. J. Stats. 1910, Vol. 4, Sec. 15.)

South Carolina provides a State Quarantine Hospital in Charleston Harbor. (Code 1912, Sec. 1662.)

Vermont permits the Director of State Institutions, with the approval of the Board of Control, to designate or construct a ward or hospital room at any state institution for the purpose of giving necessary treatment and care to the inmates thereof. (P. A. 1919, No. 176.)

Some states, where there are not adequate facilities for the care of sick or disabled persons, give subsidies, or grants, in aid to institutions, public or private, special or general in character.

Washington in the case of tuberculosis hospitals. (Laws 1919, Ch. 35.)

Connecticut to private institutions under the direction of the Governor and the managers of the institutions for the support of charity patients. (Revision 1918, Sec. 1864.)

New Mexico to the support and education of orphan and indigent persons. (Stats. Ann. 1915, Secs. 5111-5116), and a number of other states.

(C) County Hospitals

The local unit may be, and usually is, the agency used for the dispensing of relief, medical or material in character. The county hospitals have quite generally grown up in connection with the county infirmaries or asylums for the care of the indigent insane and dependent poor. There has in the last few years been a very definite tendency to assume a closer supervision over the care and treatment of the insane as evidenced by the establishment of state hospitals for the attention of such persons. In a way the responsibility for the general care of the sick has remained largely local in character although the establishment of hospitals by the State in connection with universities and under the supervision of boards of health may be considered a contra-indication. These general state hospitals, however, are limited usually in bed capacity and although they fill a need for special care, only supplement and do not displace the necessity for local facilities.

1. **General: Care of Indigent.** Arizona, California, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming regulate the care of the sick poor in county hospitals or infirmaries. Sometimes this is done by special provision or act as in the case of Laramie County, Wyoming, or by general provision as in Michigan, where by constitutional provision any county in the State, either separately, or in conjunction with other counties, may appropriate money for the construction, maintenance, or assistance of public or charitable hospitals, sanatoria, or other institutions for the

treatment of persons suffering from contagious or infectious diseases.

Arizona gives to each county the care of indigents, including medical attendance. (Rev. Stats. 1913, Sec. 2481.)

California permits the board of supervisors in each county to establish and maintain a county hospital. (1915, Deering, 4223.) No contract for the care or attendance of the indigent sick is to be let to any person. (Same, Sec. 4041.)

Delaware uses the terms "almshouse," "infirmary," and "hospital" as synonymous and permits the care and transfer of patients to such places. (Rev. Code 1915, Sec. 1460.)

The Florida Constitution requires the respective counties to provide "in the manner presented by law for those inhabitants that, by reason of age, infirmity, or misfortune, may have claims upon the aid and sympathy of society." (Constitution, Act XIII, Sec. 3.)

Georgia vests the supervision of pauperism and dependents in the ordinance of each county. (Code 1911, Sec. 541.)

Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire (tuberculosis and contagious disease hospitals), North Carolina, Ohio, Oklahoma, Pennsylvania, South Dakota, Utah, and Wyoming prescribe the procedure for the inauguration and establishment of such hospitals.

Mississippi defines the group of poor and needy persons who are to be admitted as charity patients for medical or surgical treatment into any charity hospital supported in whole or in part by the State. Such applicant is to produce and file with the superintendent or person in charge of the hospital, a certificate signed by himself and three other persons, residents of the same county. One of these signers is to be a practicing physician, who is to give the name and post office address of the applicant, stating that he is poor and needy and unable to pay the cost of treatment. This is to be kept as a record in the hospital. In an emergency the case may be admitted and later reported to the board of trustees who are to inquire into the matter and if the person

is able to pay, may charge him reasonably. (Laws 1922, p. 331, amending Ch. 166, Laws 1912.)

2. **Bond Issue for County Hospitals.** Kansas states that whenever the board of county commissioners in a county having less than 40,000 inhabitants is presented with a petition signed by twenty-five per cent of the resident freeholders of the county, ten per cent not residents of the city, town, or village, where it is proposed to locate the hospital, asking that a tax may be levied for the establishment and maintenance of a public hospital, the question is to be submitted and, if the decision is favorable, a hospital may be erected. (G. S. 1915, Sec. 2831, amended 1919, Ch. 158.)

In Minnesota the county boards are authorized to construct hospitals and accept gifts therefor, for patients other than insane. The question of erecting the hospital, and the amount of money to be expended, is to be submitted to the voters for approval or disapproval. (G. S. 1913, Sec. 700 et seq.)

On petition of one hundred resident freeholders in Missouri, fifty not residents in the city where it is proposed to erect a hospital, asking that an annual tax be levied, the county court is to order an election. The county court may issue bonds anticipating the collection of the tax and appropriate money for the support of the hospital. (Laws 1917, p. 145.) The hospitals are constructed for the benefit of all who become sick, indigent, or maimed, and are open to pay patients or indigents, to residents or non-residents. A detention room for the examination and detention of persons brought before the commissioners of insanity is to be provided. Where suitable provision has been made for the care of indigent tuberculous residents, the county court of any county may contract with the board of hospital trustees of any public hospital for the care of such persons in the sanatorium department. (Rev. Stats. 1919, Sec. 12626.)

In Ohio, county or city hospital trustees may agree with a corporation organized for charitable purposes and not for profit for the erection and management of the hospital. The question is to be submitted to the electors. (Laws 1923, p. 359, amending Code, Sec. 3411.)

Utah gives the county commissioners power to cause

hospitals to be erected, repaired, or rebuilt and furnished; to levy taxes for the maintenance and relief of the indigent sick and otherwise dependent poor; to contract for the care, maintenance, and relief of all indigent sick, and to provide a farm in connection with the county hospital, infirmary, or poorhouse. (Comp. Laws 1919, Sec. 1400-32, et seq.) On petition of the resident freeholders it is the duty of the commission to hold an election concerning the levy of a tax for hospital purposes. An apartment for insane persons may be provided and provision may also be made for tubercular or infected persons. (Same, Sec. 2775, et seq.)

Wisconsin permits the county boards to establish a county hospital for the treatment of indigent persons or those residents "afflicted with any disease, malady, deformity, or ailment, which can properly be remedied or which can be advantageously treated by proper medical, dental, or surgical care. . . ." (Laws 1923, Ch. 228, amending Code. Sec. 49.145.)

Instead of a distinctly general hospital the county institution may be actually and in point of fact designated as an institution for the aged or indigent poor to whom the most cursory hospital or medical relief is given. Institutions of this sort could perhaps be better designated as almshouses or county infirmaries rather than as hospitals. In them the charitable features and the care of the chronic case is particularly emphasized. Kansas provides for the raising of revenue to care, support, and maintain the poor, within or without the county home or asylum. (Laws 1919, Ch. 160.) Kentucky stipulates that all paupers, idiots, or harmless, incurable lunatics are to be returned by the state institution in which they are confined to the several counties from which they were sent or delivered. (1915 Stats., Sec. 247.) Mississippi provides only for the temporary care and maintenance of an alleged insane person within the county. (Code 1917, Sec. 3681.)

New Jersey, North Carolina, Ohio (temporary detention hospitals), Pennsylvania, and Wisconsin (chronic cases), permit the establishment of single or joint institutions.

3. **Special County Hospitals: Tuberculosis.** Some counties permit the establishment of general hospitals and in the last few years enabling acts have been passed permit-

ting the establishment of special hospitals. Arizona, California, Florida, Georgia, Illinois, Indiana, Iowa, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Vermont, Virginia, Washington, and Wisconsin make provision for the establishment of county tuberculosis hospitals.

California permits any county or group of counties to establish and maintain a hospital or ward for the treatment of persons in the active stages of tuberculosis. There is a compensation or subsidy from the State if the institution conforms to the regulation of the State Tuberculosis Bureau. (Stats. 1919, Ch. 164.)

In Illinois counties may discontinue the provision for a county tuberculosis hospital tax after a referendum to the voters (Laws 1923, p. 301), and counties maintaining such a hospital may convey the property or any part thereof to any other county or counties adjacent, as agreed on by the county boards and to secure greater efficiency of management. (Same, p. 302.)

In Indiana the board of county commissioners may establish county tuberculosis hospitals, lease real property, erect buildings (after the plans have been approved by the State Board of Health, as in Massachusetts and Pennsylvania), appoint managers, organize a training school for nurses, and accept or hold in trust funds or gifts for such purposes. Whenever the board of county commissioners of any county has a petition signed by two hundred resident freeholders asking that the question be submitted to the voters whether a county hospital for the care of persons afflicted with tuberculosis shall be established, an election for the submission of the question is to be held. (Burns, 1918, Sec. 37776-A; Acts 1919, Ch. 30.)

Minnesota boards of county commissioners may establish and maintain public tuberculosis sanatoria. (G. S. 1913, Sec. 709.) The commissioners of any county or group of counties with the advice and approval of the advisory commissioner of the Minnesota Sanatorium for Consumptives, may establish and maintain a sanatorium by a majority vote of the commission. The State Treasurer is to pay certain aid to the

counties when application is made therefor, not to exceed $500 per bed, when the institution is conducted in a manner approved by the advisory committee of the Minnesota Sanatorium for Consumptives. Any resident may be admitted for care and treatment but preference is to be given to patients in the most advanced stages and to residents over non-residents. (S. L. 1923, Ch. 19.)

A New York statute requires the board of supervisors of every county of 25,000 population or more to establish a county hospital for tubercular persons unless such county institution, approved by the State Commissioner of Health, exists or the contract by the commissioners has been entered into. The location and construction of such institution by the State Commissioner of Health is provided, if the board of supervisors have failed to secure a site. (Laws 1920, Ch. 834.)

In North Carolina the board of county commissioners may establish and maintain wholly or in part one or more tuberculosis dispensaries or sanatoria. (Ann. Stats. 1919, Sec. 1297-29.) It is also provided that instead of erecting an institution in the county, the county commissioners may use part or all of the funds in erecting and maintaining a building or buildings at the State Sanatorium or erect a tuberculosis hospital in the county where the bonds are issued and may also use part of the funds to erect and maintain a building or buildings at the State Sanatorium. (Same, Sec. 7280.)

In Ohio on or after January 1, 1914, no person suffering from pulmonary tuberculosis is to be kept in any county infirmary. (G. C. (Throckmorton), 1919, Sec. 3139.) District or county tuberculosis hospitals may be erected for the care and treatment of tuberculous persons admitted to the county infirmary within the district, and other residents may be admitted. The State Department of Health has general supervision of all the tuberculosis hospitals and the location, plans, and estimates of cost for all district hospitals must be submitted to and approved by the State Department of Health and the Board of State Charities. (Same, Sec. 3147.) Instruction is to be provided by the various heads of education for children of school age admitted to tuberculosis hospitals. (Laws 1923, p. 123, amending Code, Sec. 7644.)

Oregon, after presenting the procedure for the establishment of county or joint county tuberculosis hospitals, provides that no such hospital is to be located on the grounds of an almshouse. (Gen. Laws 1920 (Olson), Sec. 8402, et seq.)

Pennsylvania (Stats. 1920 (West), Sec. 16973, Tennessee (P. A. 1917, No. 121), permit appropriations from county funds or contract for the treatment of tuberculous persons of the county with any regularly incorporated society or municipality (Tennessee), maintaining a tuberculosis hospital).

South Dakota permits the operation of the county hospital as a tuberculosis sanatorium if this is deemed advisable. (Laws 1923, Ch. 247.)

Vermont permits any county to provide a tuberculosis hospital and two or more counties may unite for the purpose of establishing and supporting it. (Gen. Laws 1917, Ch. 190.) Camp hospitals or sanatoria may be established by any county after the written permission of the State Board of Health has been obtained. (Same, Sec. 267.)

Alabama (S. L. 1923, p. 750), and Idaho (S. L. 1923, Ch. 34), have repealed their provisions authorizing the erection and maintenance of district or local tuberculosis hospitals (Alabama under the supervision of the Tuberculosis Commission).

4. **Special County Hospitals: Contagious Diseases.** The contagious disease hospital or pesthouse is one of the early forms of county hospitals just as the county general or memorial hospital is one of the more recent developments.

Alabama, Colorado, Delaware, Florida, Georgia, Idaho, Iowa (venereal diseases), Maryland, Michigan, Mississippi (pellagra), New Jersey (contagious diseases other than smallpox), North Dakota, Ohio, South Dakota, Pennsylvania, and Wisconsin permit the establishment of detention hospitals for persons suffering from contagious disorders. These may be temporary, as in Delaware, Florida, Idaho, and Maryland, or permanent, as in Alabama, Colorado, and Michigan, under or without the direct control and subject to the regulations of the Board of Health, as in North Dakota and Pennsylvania.

In New Jersey the Board of Chosen Freeholders, "whenever in its judgment the public need requires it," may acquire

lands and erect and maintain a hospital for contagious or infectious diseases, provided that it is not to be located within two hundred and fifty feet of any public highway or any dwelling-house or other inhabited dwelling. (Rev. Stats. 1910, p. 2752, Sec. 17); (Laws 1923, Ch. 45.)

In North Dakota each local board of health may provide such temporary hospitals for persons afflicted with infectious or contagious diseases as it judges best and such hospitals are under control and subject to the regulations of the board of health. (Comp. Laws 1913, Sec. 429.)

Ohio vests the management and care of inmates of county infirmaries in the Director of Public Safety, the infirmary or pesthouse to be herein established. (Throckmorton, 1921, Sec. 4089.)

In South Dakota, on application of the board of health. it is lawful for the county commissioners to authorize by ordinance or resolution, the establishing of a pesthouse or detention hospital. (Laws 1919, Ch. 283.)

5. **Special County Hospital: Memorial Hospitals.** Wyoming provides for the establishment of memorial county hospitals, so-called. On the guaranty of a gift the county commissioners are to appoint a "medical doctor" and to levy a tax sufficient to provide for the maintenance of the hospital. A board of three trustees is to be appointed by the county commissioners to erect, manage, and control the hospital and its fund, for which they are to receive no compensation, their term being from two to five years. Gifts may be accepted, but no county is to maintain more than one county hospital. The keeping of records, etc., is prescribed and pay patients may be received. The title of land is in the county. (Laws 1917, Ch. 88; 1919, Ch. 7 and 89.)

Special acts or provisions may be made applicable to certain counties governing the erection of specified hospitals therein.

6. **Township Hospitals.** Missouri has authorized townships to erect and maintain buildings for hospital purposes, the procedure being about the same as for county hospitals. (Laws 1923, p. 230.)

(D) Municipal Hospitals

Just as in the case of county hospitals, the municipal hospitals may be established by general or special act of the Legislature or by charter. Some of the statutes read "any county, city, or municipality, . . ." thereby including local authorities under one general enabling act. On the other hand, we may find the special charter provision as in Rhode Island, where by special act the City of Providence is authorized to spend $60,000 for an addition to the tuberculosis ward of the city hospital. (Acts and Resolves 1916, Ch. 1406.) Most of the municipal institutions are general or special in character, dealing with tuberculosis, infectious, contagious diseases, etc. Florida and Missouri provide for municipal insane hospitals.

1. **Power to Establish and Maintain.** Like the county, the municipality must have specific power granted by the State to erect or maintain an institution used as a hospital. This power is granted in: Alabama, Arizona (?), California, Colorado, Delaware (local board of health may erect temporary wooden hospitals or hold hospitals for the isolation or protection of persons), Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island (City of Providence), South Carolina (the local board of health with the consent of the town or city council), South Dakota (city council or city commissioner of the first or second class), Tennessee, Texas, Utah (?), Vermont (towns), Virginia (towns through special charter provisions), Washington, and West Virginia (cities or towns with a population of not less than 5,000). The provisions vary in the different states; thus, Alabama authorizes the corporate authorities of any town or city and the county to unite to establish hospitals, temporary or permanent, for the reception of the sick or infirm, or of persons suspected of having infectious or contagious diseases. (Code 1907, Sec. 734.) Municipal authorities have the power to issue and sell bonds for the purpose of erecting infirmaries, hospitals, and pesthouses, and for rebuilding, extending, enlarging, or repairing the same. (Gen. Acts 1919, No. 473.)

In California the governing body of municipal corporations of the first class have power to provide for the erection of a municipal hospital and to levy a tax therefor. (Pol. Code 1915, Act 2342.) Special regulations may be applied to certain cities as in Sacramento, where under the health and quarantine regulations, the board of health may provide hospitals for persons afflicted with cholera, smallpox, yellow, typhus, or ship fever. (Same, Sec. 3022.) Every city, county, city and county, etc., is authorized to establish and maintain a tuberculosis ward or hospital for the treatment of persons in the active stages of tuberculosis. (Stats. 1919, Ch. 164.)

In Connecticut, towns, cities, and boroughs may enact by-laws and ordinances "to provide for the medical care and treatment of children of the compulsory school age whose education may be retarded by reason of defective physical condition." (P. A. 1923, Ch. 284.)

Idaho permits any municipal corporation by ordinance or by-law to acquire by purchase or otherwise, hospital grounds, building, and equipment, and maintain and operate the same. (Comp. Stats. 1919, Sec. 3973.) Municipal authorities may, when necessary, provide a hospital for infectious diseases. (Stats. 1919, Ch. 7, Sec. 1667.)

Whenever one hundred legal voters in any incorporated city in Illinois, with a population of less than 10,000, present a petition to the city council asking that a tax not exceeding three and one-half mills on the dollar be levied annually, a special election is held, and if favorable, the tax is levied and collected for the "hospital fund." (Callaghan, 1917-1920, Sec. 1752.) The city council of cities and boards of trustees of villages have the power to "establish and maintain a public sanatorium and branches, dispensaries, and other auxiliary institutions connected with the same within or without the limits of such cities and villages for the care of persons afflicted with tuberculosis, the tax not to exceed one mill on the dollar annually . . . in addition to other taxes. This is not a part of the general tax levy for city or village purposes and is not to be included in the two per cent assessed valuation upon which taxes are required to be extended. (Laws 1923, p. 266.) In case the hospital tax has been levied and collected for three or more years and the city has not

established or maintained a hospital according to the provisions of the act, the mayor, with the approval of the city council, may authorize the payment of all funds derived from such tax "to any non-sectarian public hospital, within the limits of the city, maintained for the use and benefit of the inhabitants of such city and any person falling sick or being injured or maimed within its limits." The funds are to be under the control of the hospital and to be used only for its maintenance. The funds thereafter shall be turned over to the hospital until the city council, by ordinance, approved by the majority of electors voting thereon at a general or special election, provide otherwise. A semi-annual report of funds received from the city hospital tax is to be rendered by the hospital to the city council. (Laws 1923, p. 172.)

In Iowa the council of a city of 5,000 or more, the city manager, or the commission governed cities, may by resolution submit to the qualified electors at a city or special election the question of whether there shall be a tax levied for hospitals. (Code 1913, Sec. 741-G; Supp. 1915, Sec. 1056.)

The provisions vary widely as to wording, grants of power, bond issues, tax assessments, etc. Most of the laws are permissive, except perhaps in the provision for contagious disease hospitals, as in Maine or Massachusetts, the latter requiring each city to establish and be constantly provided within its limits with one or more isolation hospitals for the reception of persons having smallpox or other disease dangerous to the public health, but such hospitals are not to be established within one hundred rods of an inhabited dwelling house situated in an adjoining town, without the consent of such town. (R. L. 1902, Ch. 75.) Each city in Massachusetts is to provide treatment, either in a hospital or as out-patients, of indigent persons who are suffering from contagious or infectious venereal disease. (Same, Sec. 39.) Cities or towns having isolation hospitals may receive persons from adjoining towns on approval of the board of health. (Supp. 1908.)

No city or county in Minnesota is to establish a tuberculosis sanitarium, pesthouse, hospital, or detention home in any village without first making application for license to the village council, giving proposed location, plans, specifications, and other information required by the council, nor until the

village has granted a license for its erection and maintenance. The council is to consider this license within ten days after the request has been filed and may regulate the location, require changes in the plans, . . . to protect the health and safety of the inhabitants. (S. L. 1923, Ch. 237.)

Nebraska gives cities and villages 1,000 to 5,000, and 200 to 1,500, power to erect, establish, and regulate hospitals and to provide for the government and support of the same. Special charter provisions relate to certain cities. (Ann. Stats. 1911, Secs. 8841, 8060.)

In New York a hospital, camp, or other institution for the treatment of tuberculosis is not to be established until after hearing before the State Commissioner of Health. (1909, Consol. Laws, Sec. 319.) This Commissioner from time to time is to submit to the authorities of the several municipalities recommendations as to the establishment of hospitals for contagious disease. (N. Y. Supp. 1913, p. 2047.)

II. PRIVATE HOSPITALS

(A) Private vs. Public Hospitals

The private hospital is distinguished from the public hospital by the fact that it is not publicly owned and operated, but is, on the contrary, owned and operated by private individuals or a private concern. "A hospital founded by a private benefactor is, in point of law, a private corporation, although dedicated by its charter to general charity . . . when the corporation is said at the bar to be public, it is not merely meant that the whole community may be the proper objects of the bounty, but that the government has the sole right," as trustees of the public interests, to regulate, control, and direct the corporation, its funds, and its franchises, at their own good will and pleasure. (1895, Washingtonian Home vs. Chicago, 157 Ill. 414, 41 N. E. 893.)

A hospital, private in character, may be operated and maintained for charitable purposes or for profit. "A charity, in a legal sense, may be defined as a gift to be applied, consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies

from disease, suffering, or restraint . . . or otherwise bearing the burdens of government. It is immaterial whether the purpose is called charitable in the gift, if it is so described as to show that it is charitable in its nature." (1867, Jackson vs. Phillips, 14 Allen (Mass.) 556. Also, 1893, Crerar vs. Williams, 145 Ill. 625, 34 N. E. 467.) This distinction between the public and private institution, the charitable and profit making or proprietary concern, is legally a very fundamental one.

(B) Incorporation

A hospital may be legally an incorporated or unincorporated institution. "An incorporated society is an institution. It may be for business, for religious, or charitable objects. The purposes for which it is established or instituted will determine its character." (1875, Doughten vs. Vandever, 5 Delaware Chancery 51.)

Further it is said, "It goes without saying that the purpose for which a corporation is organized must be ascertained by the terms of its charter." (1896, Company vs. People, 161 Ill. 101, 43 N. E. 779.) The hospital may be as in business, a joint partnership, or an unincorporated voluntary association. The tendency is very markedly toward the incorporation of the institution which brings about a clear statement of purpose, a definition of rights and duties and the establishment of the group as a distinct legal entity. The incorporation laws of each state vary to an extent and it will not be attempted here to enumerate all the variations. It may be arranged by general or special acts relating to all hospitals or groups of hospitals or to a special institution. In Massachusetts if an institution or group of individuals desiring to incorporate, feel that they cannot do so under the general laws of the State, they are permitted to draw up their articles of incorporation, and apply to the Commissioner of Corporations for a special charter, stating the reason for such application. If he feels the request justified within the law, he is to attach a memorandum to the petition and refer the same to the General Court.

1. **Procedure for Incorporation.** The procedure for incorporation may be specified or outlined in the law, the powers granted and liabilities incurred, the officers designated, etc. First there is the drafting of the articles; sec-

ondly, the signing of the same by the requisite number of incorporators; third, the filing and recording of the articles with the proper state or county officials; fourth, the organization of the corporation ready for the transaction of business; and fifth, the securing of the permit (if required) from state officials if necessary to transact business within the State. The qualifications of incorporators vary with the different states. Citizenship or residence may or may not be necessary, and in the majority of the states the incorporators must have at least one share of the capital stock. They must be of full age and known persons.

The corporation must, of course, have a name. Some states require that the name be distinct from that of any existing domestic corporation, or not so similar as to deceive or cause confusion. Connecticut, Delaware, Kentucky, Massachusetts, New York, Utah, and Virginia forbid the use of the name of a foreign corporation by a newly created domestic corporation. The name is considered a part of the property of the institution and the use of another name so like it as to deceive the public and rob the business will be forbidden by equity. (1902, Co. vs. Co., 112 Ky. 937, 66 S. W. 1032.)

2. **Articles of Incorporation.** The articles of incorporation must contain a specific declaration of the nature of the business and these purposes with the general laws pertaining thereto measure the powers of the corporation. Alabama states that a corporation may be organized for any general business or lawful enterprise; Arizona and Arkansas for the transaction of any lawful business; Colorado for any lawful purposes; California for any purpose for which individuals may associate themselves, etc. Generally speaking, a company may not incorporate for more than one purpose. Corporate powers may be included in the instrument of incorporation. Common law powers are bestowed upon corporations irrespective of statute or charter provisions, thus: 1. The right to use the corporate name. 2. The right to perpetual succession. 3. The right to acquire, hold and dispose of corporate property. 4. The right to appoint corporate officers and agents. 5. The right to establish by-laws for the government of the corporation, its officers, and members. 6. The right to sue, and be sued. These common law powers may be enumerated in the act or charter or they may be referred

to and then enumerated as in Indiana. (Laws 1901, C. 127, Sec. 28.)

3. **Powers on Incorporation.** Express powers are those granted to all corporations by statute, whether inserted in the charter or not; or those permitted by statute to such as may take advantage of them by reserving them in the charter. The first ipso facto become a part of the charter; the second are available only when specifically reserved or set forth in the articles. These powers are numerous and will not here be listed; some relate to the purchase and holding of stock, the transaction of business outside the State, the consolidation with other corporations, etc. Those powers authorized by statute and applicable to all corporations alike are, in part, the right to extend corporate existence; to change the corporate name or purpose; to increase or decrease the capital stock, etc. Those powers which must be reserved or specified in the articles of incorporation are in part: To subscribe for, purchase, and hold stock in other corporations; to transact any or part of its business outside the state of its origin, to issue preferred stock, to classify directors, etc.

(C) Charitable Corporations

1. **Duties and Powers.** The issuance or sale of stock is one of the attributes of a profit-making concern; the usual charitable organization or association does not issue stock. The states may and frequently do prescribe the organization of charitable and proprietary hospitals under different statutes. Thus Alabama states that corporations not of a business character are to elect not less than three nor more than nine trustees; Tennessee not more than one hundred. Incorporation is complete when the trustees file a certificate in the office of the judge of probate of the county in which the corporation is to exercise its functions and within thirty days after their election in Alabama. The certificate is to state the corporate name selected; the names of trustees, and the length of time for which they are elected. Trustees are to subscribe and record the certificate. The declaration is to be verified by one or more signers and the judge of probate is to issue a certificate empowering the corporation to do business under the new name with the powers and capacity specified.

(Domestic Corporation Laws 1908, Act 18, Secs. 3613-3626.)

2. **Requirements by State.** In Arizona and Iowa a verified certificate stating the general objects of the association, the principal place of business, and the names of officers for the first three months, is to be filed in the office of the county recorder in the county in which the principal place of business is situated and with the Corporation Commissioner. (Rev. Stats. 1913, C. 756, Sec. 2197, et seq.)

Arkansas requires filing with the proper clerk of the Circuit Court and the county recorder. Such corporations may incorporate under other state laws if necessary. (Stats. 1921, Sec. 1778.) Florida has virtually the same provision, the number of persons incorporating being five or more. (Gen. Stats. 1920, Sec. 4499); Georgia designates the Superior Court. (Code 1911, Sec. 2836.)

Pennsylvania requires that application is to be made to the Court of Common Pleas, a certified copy of which is sent to the Board of Public Charities. This Board then advises the Court as to whether the needs of the community require such institution with the reasons for such conclusions. The Court is not to approve incorporation unless the same is required by the community and the recommendations of the Board are not conclusive upon the Court. This apparently does not apply to hospitals with an endowment of over $5,000 per annum. (Stats. 1920, Sec. 11909.)

California specifies the filing of articles of incorporation with the Secretary of State, the number of directors being not less than three nor more than thirty-one. The following states require the filing of articles of incorporation in the Secretary of State's office: Colorado; Connecticut; Delaware (copy to county recorder where principal office is located); Idaho (copy to county recorder); Illinois (issue of a certificate of organization by the Secretary of State to the county recorder); Kentucky (recording in county clerk's office); Michigan (copy to be filed with county clerk); Mississippi (persons to report organization on prescribed form to be furnished by the Secretary of State (Code 1917, Sec. 4110); Nebraska (record or certified copy in county recorder's office); Nevada (recording in county clerk's office); New Hampshire (office of town clerk); New Jersey (record in

county clerk's office); Oklahoma (special provision concerning railroad companies operating hospitals); Rhode Island (certificate of fee from State Treasurer); Ohio, South Dakota, Tennessee, Texas, Utah, Vermont (provided the municipality consents); Wyoming, recording in county clerk's office also).

In Virginia the certificate is to be acknowledged, signed by three persons, and presented to the judge of the circuit court of the county, or of the circuit, corporation, or chancery court of the corporation where the principal office is to be located. The judge is to ascertain and certify whether such persons are of good moral character, and suitable for such purposes. The judge then endorses the same, the fees are paid, and the certificate is presented to the State Corporation Commission which may issue or refuse the charter. When issued the endorsements are certified to the Secretary of the Commonwealth, recorded by him, and certified to the clerk of the circuit court of the county. (Code 1904, Sec. 1105-D.)

Indiana (duplicate in county recorder's office, constitution and by-laws to be filed in office of State Auditor, who has the power to examine the business). (Burns' Stats. 1914, Sec. 4286, et seq.) It is further provided that any number of persons, not fewer than three, may associate for the purpose of owning and conducting hospitals. They are to draw up written articles of association which are signed and acknowledged by each incorporator to specify: name, object, name and place of residence of each incorporating member, principal place of business, term of existence, corporate seal, and the number of directors with their names for the first year. These are made in duplicate, the original filed in the office of the Secretary of State, and a copy in the county recorder's office where the principal place of business is located. The act is to apply to fraternal organizations, order or orders, lodge or lodges, and body or bodies. (G. L. 1923, Ch. 84.)

Kansas requires filing with the Secretary of State and a certified copy of same is given to the incorporators which is evidence of incorporation. If the corporation proposes to solicit funds in more than one county, a certified copy of the charter must be filed with the Secretary of State, and before any soliciting is done, a certificate must be secured from the State Board of Control. (G. S. 1915, C. 23.)

Washington (articles executed in triplicate are filed in the office of the Secretary of State, one in the office of the county auditor, and one to be retained.)

Wisconsin, within thirty days verified copy showing date of filing and acceptance by the Secretary of State is to be recorded by the register of deeds of the county in which the corporation is located. The register of deeds transmits a certificate to the Secretary of State, who then issues a certificate of incorporation. (Stats. 1919, Sec. 1771.)

There must be a written approval of the State Board of Charities and of a justice of the Supreme Court of the district in which the principal office is located in New York before filing with the Secretary of State and the county clerk. (Consol. Laws 1909, Sec. 130.)

North Carolina makes the same provision as for business corporations, namely, acknowledgment before the county recorder of deeds before filing with the Secretary of State.

Louisiana requires an authentic act in the English language signed by each of the incorporators stating the name, purpose, location, officers, and their election, its existence, etc., to be recorded in the office of the recorder of mortgages, or clerk of court in the parish selected for domiciles. (Stats. 1913, Sec. 1390.)

Maine permits seven or more persons to apply in writing to the justice of the peace of the county in which domiciled, who may issue a warrant directing one of the applicants to call a meeting thereof at the time and place the justice requires. At this meeting a corporation may be organized and a certificate setting forth the name, purposes, location, officers, etc., is to be recorded in the register of deeds and the Secretary of State's office. (Rev. Stats., C. 62, as amended 1919.)

In Maryland three or more persons, at least one a citizen of the State, may sign and acknowledge a certificate stating subscribers, name, purposes, location, capital, stock, number of trustees, etc., before a justice of the peace and certify under seal to a clerk of the circuit or superior courts. This is then submitted to one of the judges and in turn certified to the State Tax Commissioner who, on payment of the fees, records the same and transmits the original certificate to the

clerk of the circuit or superior courts. (Laws 1908, Ch. 240.)

Massachusetts requires examination and approval of the certificate and reports of three or more persons associated by written agreement by the Commissioner of Corporations. Upon payment of fees, the same is recorded in the Secretary of State's office. (G. A. 1915, Ch. 213, etc.) The form of certificate of organization is to be issued by the Secretary of the Commonwealth and is to be evidence of incorporation. (Rev. Laws 1902, Ch. 125.)

In Missouri three or more chief officers submit to the Circuit Court the articles of agreement, praying for a pro formo decree thereon. If the Court assents, it is to be entered on record or a certified copy of which order is to be attached to the articles. An attorney may be appointed to examine and show why the petition should not be granted. Recording takes place in the office of the recorder of deeds of the county and then the articles are filed with the Secretary of State, who issues a certified copy. (Rev. Stats. 1919, Ch. 90.)

In Montana filing is with the county clerk and a copy to the Secretary of State, who issues a certificate that the facts have been recorded in his office. (S. L. 1909, Ch. 106.)

Oregon requires the articles to be made in triplicate and acknowledged, one copy to the county clerk's office, one to the Corporation Commissioner, and the third to be retained. (Laws 1920, Sec. 6998.)

In West Virginia the articles are acknowledged and filed with the county clerk.

As has been stated before, no attempt has been made to include all the requirements specified to be contained in the articles of incorporation or limitations which must be regarded, as for example, the duration of existence which may be twenty-five years in Nebraska, fifty years in Kansas, Wyoming, and others. The holdings of such corporations are frequently limited as in Alabama, Kansas, Louisiana ($300,000), Massachusetts ($500,000), Maine ($900,000), Nevada, North Carolina, Texas, and others. Some states, Illinois for example, specify that the articles must be in English, others that members will not be liable unless so specified by articles or by-laws as in Utah. Nevada states that trustees shall have no compensation for their services.

Fees are not required in some states, among others, Texas and Wisconsin. Reports may be required either annually, as in Nevada, to the county commissioner, or when required by the Attorney General or Legislature as in Michigan. Examination of books and activities may be reserved as a right of the State, as in Oregon to the Insurance Commissioner, or in Pennsylvania to the Board of Charities. The procedures governing the dissolution or amalgamation of such corporations have not been herein included.

(D) Business or Profit-Making Concerns

All of the states regulate the organization, incorporation, registration, and control of business or profit-making organizations. Colorado, Illinois, Kansas, Missouri, North Carolina, require that after the name of such concern the term Corporation, Inc., etc., shall be included. The registration is in many cases the same procedure. Fees are for the most part required. Corporate stock may be issued, the amount, method of issue, distribution, etc., may have to be stated. By-laws usually have to be filed. Time limit . . . Kansas fifty years . . . special requirements and provisions must be made known. A portion of the stock must have been paid in usually, in Alabama, at least twenty per cent or not less than $1,000; same in Connecticut and Delaware; and Nebraska, $2,000. The registration may be through the courts, the State Treasurer and Secretary of State, or other designated officers. The scope of the business, the numbers, duties, selection or election, and term of office of directors, stock and stockholders, liability, sale, etc., powers, rights, and duties, consolidation or merger, assets, or dissolution are usually specified. Arizona and other states require the publication of articles in the county. All deeds are to be made in the name of the corporation and signed by the person representing same and designated in the articles of incorporation, and sealed with the seal of the corporation in Arizona. This differs from charitable corporations where to dispose of property a court order may be required. In Arkansas stock ledgers are to be kept open for examination of the stockholder. In the absence of actual fraud, the judgment of the directors covering the value of the property is conclusive.

In California the word "trust" must not be used as a

part of the corporate name. The articles must be subscribed and acknowledged by three or more persons, a majority being residents and the directors signing also.

Colorado limits the term of existence to twenty years except for insurance companies.

Connecticut permits the corporation to transact business outside of the State if not prohibited by the state or foreign country.

1. **Incorporation.** Delaware requires the certificate of incorporation to be sealed and signed by each of the original subscribers of the capital stock, or if there is no capital stock, by each of the original incorporators authorized and acknowledged. The business of the corporation is to be managed by a board of directors, not less than three, and each holding some of the capital stock. Each of these directors is to hold office until his successor has qualified and the failure to elect officers does not dissolve the corporation.

The letters of incorporation in Florida are issued by the Governor with a certified copy of the charter annexed to the letters patent by the Secretary of State.

Georgia vests the power to create corporations in the courts and the judges of the superior courts of the State are authorized, in their discretion, to call and hold special terms of the courts for the purpose of granting charters to corporations. The time for incorporation there is limited to twenty years and ten per cent of the capital stock is to be paid in. All corporate powers necessary to the purpose of the organization may be exercised, but no contract except such as is necessary legitimately to carry into effect the purpose of securing debts due the company is valid. (Code 1911, Sec. 2822.)

Illinois requires citizenship of the incorporators and the directors named in the articles are to meet within sixty days after incorporation to elect officers and make by-laws. Each corporation is to maintain a place of business in the State with a resident agent in charge; a certificate showing any change of location must be filed in the office of the Secretary of State.

Indiana requires that the articles of incorporation are to be submitted to the Secretary of State and, if approved,

a certificate is to be issued showing the authorization to transact business. If not approved, the parties are to be notified within ten days after filing of the disapproval and the parties may appeal to the Superior Court with trial de novo by jury with appeal to the Supreme Court. No corporation is to be engaged in more than one kind of business and its allied and interdependent lines of business. Every corporation is to have a president, vice-president, secretary, and treasurer and officers provided in the by-laws. These officers are elected by the board of directors and may be removed as prescribed in the by-laws. (Acts 1921, Ch. 35.)

Maine specifies the rights of minority, stockholders, the calling of meetings by the justice of the peace, etc.

In Maryland private hospitals are incorporated under the general incorporation law and approval of the Board of State Aid and Charities is not required. If such institutions receive state or city aid they report to same. Recording is done by the State Tax Commission which transmits a certified copy of the certificate of incorporation to the clerk of the circuit or superior court, by whom the same is recorded. (Laws 1920, Ch. 327.) An annual report is made by the corporation to the Comptroller of the Treasury.

Business corporation law is applicable to all corporations having capital stock and established for the purpose of carrying on business for profit. In Massachusetts there is an annual report of the condition to be made. The Commissioner of Corporations is to examine certificates and reports.

Michigan specifies a board of trustees. Three to thirty members, as arranged in the articles of incorporation, are to manage affairs, fix by-laws, elect officers, etc. All funds are to be used for the purposes set forth in the articles and no loan is to be made to any trustees, officers, or servants of the corporation. (Acts 1915, No. 257.)

Private hospitals for profit are organized under the general corporation law in Mississippi as elsewhere. They may hold property (personal) in any amount necessary and proper for the use and purposes not to exceed $1,000,000. An increase in value is not to work a forfeiture. (Code 1917, Sec. 4069.)

In Missouri, if a portion of the capital stock is paid in, the articles of incorporation must give an itemized description

of the real estate. The articles set out the name, location, capital stock, number of shares and par value, the names and places of residence of the shareholders, the duration and purposes. (Laws 1919, Ch. 90.)

A hospital incorporated with capital stock is a profit-making concern in Nebraska. No company is to employ stock, means, assets, or other property directly or indirectly for any purpose whatever other than to accomplish the legitimate object of its creation. Every corporation previous to the commencement of business must adopt and file articles of incorporation, and domestic corporations must also file with the county clerk articles fixing the limit of indebtedness and if not organized within one year after incorporation, its corporate powers cease. The nature of incorporation must be published. (Stats. 1911, Sec. 4100.)

In New Hampshire, the attorney general may require amendment of additional information before endorsing the articles of incorporation. (Laws 1919, Ch. 92.)

In New York, hospitals cannot lawfully be incorporated under the Business Corporation Law. (Pam. 1920, N. Y., Board of State Charities.)

In North Carolina the incorporators act until the election of the directors and the first meeting is called by notice published in the newspapers. (Stats. 1919, Ch. 22.)

In Utah the duration of the corporation is to be specified in the articles and to be not less than three nor more than one hundred years.

No pretense whatsoever is made to include herein the greater part of the laws governing the organization of business corporations. On the other hand, and for the most part, the provisions herein specified are typical.

(E) Foreign Corporations

Most of the states regulate the terms and conditions on which foreign corporations may carry on business within the State whether such corporation is profit making or eleemosynary in character. It is customary to require the corporation to designate an agent residing within the State upon whom judicial process may be served and to require the filing of a certified or sworn copy of the charter of the corporation, usually with the Secretary of State and in the local recording

office, while some require full information concerning the nature of the business and the financial condition of the corporation as in California, Colorado, Connecticut, and Delaware.

1. **Transaction of Business.** The right to transact business in a foreign state is purely a matter of state comity and the power of the states over foreign corporations with respect to imposing conditions for doing business are as broad as those exercised over domestic corporations. (1898, Cooper vs. Newell, 173 U. S. 566; 1891, Empire Mills vs. Co., 15 S. W. 506.)

In Florida the permit to do business is not to be issued when the name of the corporation is similar to that of a Florida corporation. (G. S. 1920, Sec. 4095.)

Georgia forbids the ownership of land beyond 5,000 acres. (Code 1911, Sec. 2203.)

Iowa has special provisions concerning fraternal benefit societies, orders, or associations doing business in the State. (Laws 1923, Ch. 172.)

Oklahoma apparently specifically exempts foreign corporations created solely for religious or charitable purposes, from filing articles and charter with the Secretary of State. (Rev. Laws 1910, Sec. 1335.)

Non-residence apparently does not disqualify for holding real estate in Pennsylvania. (Stats. 1920 (West), Sec. 11054.)

Vermont appoints the Secretary of State as Commissioner of Foreign Corporations by virtue of his office, and, except as otherwise provided, a foreign corporation is not to do business within the State without authority from him. (Gen. Laws 1917, Ch. 212.)

(F) Liabilities and Exemptions of Hospitals

The liabilities and exemptions of a hospital are dependent, first, upon the statutory regulations governing the situation and, secondly, upon the legal status or organization of the institution itself. Under this general heading various subjects have been grouped for convenience: the licensing and inspection of hospitals; the liability for nuisance and negligence; the exemption of property from taxation, constitutional and statutory, including general, inheritance or transfer tax and franchise tax acts, the compensation for services

rendered, the disposal of dead bodies, industrial hospitals, the regulation of employment and working conditions, etc.

1. **Licensing and Inspection.** A license may be considered as a permission or right granted by competent authority either to do that which is unlawful at common law, or which is made unlawful by a statute or ordinance such as one which includes the authorizing or requiring of a license. The power to license may be exercised for regulation, revenue, or prohibition, but not for the purpose of creating a monopoly. In the absence of an inhibition, expressed or implied, in the State Constitution, the Legislature may, either in the exercise of the police power or for purposes of revenue, levy license taxes on occupations or privileges within the limits of the State, and further, in the absence of inhibition, may delegate this power to municipal or quasi-municipal institutions to be exercised within their corporate limits. This power to tax does not include the power to license, the power to regulate or prohibit does include the power to license as a means to that end. Conditions may be attached by the State to the power or to the license, but these will not be discussed here. In some cases before a license is granted for the location of certain noxious establishments such as saloons, etc., consent may have to be obtained by vote of the people concerned as in New Jersey for the location of contagious disease hospitals; North Dakota, for any hospital treating disease for pay; or in Utah, such consent in the establishment of contagious disease hospitals must be obtained from the State Board of Health.

2. **Examination and Inspection of Hospitals.** The inspection of hospitals is, of course, very closely associated with the licensing power, being akin to examination, investigation, and regulation. Inspection is distinguished from the power to search and does not require affidavit, probable cause, or judicial warrant. It may be reserved as a condition in the license. Louisiana confers "strictly visitorial powers" on its State Board of Charities.

The following is a summary of some of the general state laws; municipal ordinances, and similar regulations are not, of course, herein included. Some of the fire laws, food and drug laws, and others, cover "all public buildings" or similar

terms applicable to hospitals. We include here only laws specifically mentioning or referring to hospitals.

Alabama has created the State Child Welfare Commission with the right of visitation and inspection of all state, county, municipal, and other agencies and institutions (including maternity hospitals), excluding insane hospitals and giving to the Commission also the right to license such agencies annually except those under state ownership and control. (S. L. 1923, No. 275.)

In Florida, on recommendation of the board of county commissioners, the Governor appoints a commission of six persons in each county, three men and three women, to inspect all charitable institutions within the county, including hospitals. They are to visit each institution once a year or oftener and to ascertain the treatment of inmates and the general condition of such institutions. (Rev. Gen. Stats. 1920, Sec. 691.)

In Idaho the sanitary conditions of public institutions within the county are ascertained by the county board of health. In New York the Commissioner of Health is to inspect contagious disease hospitals and report their conditions, establishing rules and regulations for the maintenance thereof. The State Board of Charities there inspects all charitable or eleemosynary institutions, asylums, and hospitals whether or not incorporated, and may require regulations and reports. (L. 1909, Ch. 57.) In Oklahoma this is done by the Commissioner of Charities and Corrections.

North Carolina provides for the inspection of all hospitals and sanitariums, public or private, by the State Board of Health. (P. L. 1923, Ch. 173.)

Municipal corporations may be given the privilege of granting licenses by general statute, special or charter provision, as in Arkansas, Florida, Kansas, Kentucky, Maine, Missouri, Nevada (to regulate), New York, North Dakota, South Carolina, South Dakota, and elsewhere. Or this same power may be conferred upon the boards of county supervisors, as in California.

3. **Licensing of Maternity Hospitals.** The licensing of maternity hospitals or lying-in asylums is a comparatively recent development. In California the license must be

obtained before operating from the Board of State Charities and the Board may inspect and report on conditions in such institutions. The license is revocable for cause after hearing, and it is to specify the name and address of persons undertaking care. Every person licensed is to keep a register of entrants. (1916, Cal. Gen. Laws, Sec. 1523.) Michigan makes similar provision.

Alabama licenses maternity hospitals through the Child Welfare Department annually. The Department is to prescribe the methods of registration, the type of records and reports concerning persons cared for. Every birth is to be attended by a legally qualified physician or a qualified nurse, and the premises are to be inspected at least once every three months. It is further provided that no maternity hospital is to engage in the business of child placing unless licensed to do so by the Child Welfare Department. Special arrangement is to be made concerning illegitimates, concerning whom no information is to be given out except on inquiry of a court of justice, by order of the Court, on a coroner's request, to state or local board of health, or the State Child Welfare Department. (S. L. 1923, No. 60.)

Colorado licenses such hospitals through the State Board of Health, including also institutions for the care and treatment of the sick or wounded. The Board has access to the institution at any time. (R. S. 1912, Ch. 78.) The Colorado State Board of Charities and Corrections has the power to receive and make inquiry into complaints regarding the conduct and management of private eleemosynary associations, societies, and corporations operating and existing within the State, to require reports from and issue licenses thereto, to revoke such licenses for due cause and investigate the same. (Stats. 1912, Sec. 609.) An annual report must be filed with the Board. By definition this applies to hospitals which deal in a general or special way with persons incapable in whole or in part of self-support, but not to hospitals licensed by the State Board of Health.

Georgia authorizes the Board of Public Welfare to "visit, inspect, and examine once a year or oftener" such institutions. Plans for new buildings are to be submitted to the Board before adoption. (Laws 1919, No. 186.)

Idaho licenses maternity or lying-in hospitals through the Department of Public Welfare, while the State Tuberculosis Commission there visits annually each district tuberculosis hospital. (C. S. 1919, Sec. 1236.; 1921, Ch. 57.)

Kentucky provides for the visitation of all tuberculosis sanatoria in the State at least once each year by the Bureau of Tuberculosis of the Department of Health. A report of their findings is to be filed.

Illinois licenses public or private maternity or lying-in hospitals through the State Board of Administration; Indiana and Oklahoma through the Board of State Charities; Iowa, Kansas, Maine, New York, Ohio, South Dakota, Texas, Utah, and Wisconsin through the State Board of Health or the Commissioner of Health.

Massachusetts, Missouri, and New Hampshire license and inspect maternity hospitals through the State Board of Charity. Dispensaries in Massachusetts are licensed by the State Department of Health which may visit and inspect the same. (Acts 1918, Ch. 131.) This is done in New York through the State Board of Charities; Minnesota, through the Board of Control; Nebraska, through the Department of Public Welfare; North Dakota, through the State Board of Administration. (Laws 1923, p. 41, unauthorized edition.)

Connecticut licenses maternity hospitals through the mayor or board of health of the city or the health officer of the town. Any person may inspect the hospital and remove evidences of crime, reporting same to the coroner. (G. S. 1918, Sec. 3023.) Kentucky and Tennessee have virtually this same provision, as does Virginia. (On recommendation of the State Board of Charities the license may be granted.) The State Board of Charities may inspect all hospitals and institutions for the care or support of the dependent or criminal class to ascertain whether their inmates are properly treated. Appeal may be taken from orders of the Board to the Governor in Connecticut.

The Connecticut Commissioner of Health is to inspect all public hospitals and asylums at least once in each year, submitting a report to the Public Health Council; Delaware vests this power in the State Board of Health; Ohio in the Commissioner of Health, such institutions being open at all times

to the county commissioners or township board of health as elsewhere.

The Connecticut State Department of Health may require reports and information from all public dispensaries, hospitals, and asylums, as in Delaware, Indiana, Iowa, Kansas, South Carolina, Wyoming, and elsewhere.

4. **Fire Inspection.** Fire inspection in Connecticut is carried on by city and borough fire marshals and the city fire chief, or some person appointed by him. Plans and specifications are to be passed upon and approved in Michigan by the State Fire Marshal for safety, fire protection, and prevention, and by the State Board of Health for sanitation, light, and ventilation (L. 1921, No. 401); in Missouri by the State Board of Charities and Corrections; in New Jersey by the local board of health; Ohio, by the local inspector of workshops; South Dakota, through the Commissioner of Insurance when such hospitals accommodate more than one hundred persons; West Virginia, through the State Board of Children's Guardians. No asylum, home, or institution for defective, deformed, or incurable persons is to be established or maintained within the limits of a town without the consent of such town, unless under express legislative authority in Connecticut. California recently repealed a similar provision.

Florida prescribes a state license tax not applicable to hospitals, sanatoriums and other places of like character conducted by charitable associations or societies. Counties, cities, and towns may impose further taxes.

5. **Licensing of Charitable Institutions Seeking Aid.** Charitable organizations or institutions soliciting funds may be required to have licenses, as in Maine, from the State Board of Charities and Corrections; in Michigan, from the State Department of Welfare.

In Maryland, the Secretary of the Board of State Aid and Charities is to inform himself fully as to the condition and conduct of institutions receiving financial assistance or having contracts with the State. (L. 1916, Ch. 705.) A similar provision is found in Oregon.

New Jersey will permit "no person, association, or corporation to locate, construct, or establish in any city, town, borough, township, or other municipality of the State, any

hospital, sanatorium, preventorium, or other institution for pulmonary tuberculosis without the consent and approval of the State Board of Health.'' This Board has sole authority to grant consent and the consent of local boards is not necessary. (P. L. 1910, p. 93.) Such hospitals are open to inspection by the State Commissioner of Charities and Corrections, the State Board of Health, and the County Board of Chosen Freeholders. New York and Vermont require permission for such establishment from the State Commissioner or Board of Health. All plans for such institutions in North Carolina must be submitted to the State Board of Health. Washington requires the inspection of such hospitals at least once in six months by the Director of Health.

Pennsylvania requires a license for the solicitation of public donations or subscriptions but the act is not to be applied to any fraternal organization incorporated under the laws of the Commonwealth nor to any religious organization, college, school, or university located within the State, nor to any labor union, municipality, or municipal subdivision or community organization of the Commonwealth, nor to any charitable institution or agency required by law to file reports with the Department of Public Welfare or any other of the departments or offices of the Commonwealth. (Laws 1923, No. 343, amending Sec. 14, P. L. 505, June 20, 1919.)

6. **Liability for Nuisances.** A municipal corporation seeking to establish a hospital must find legislative authority for such move, but when a group of private individuals seek to establish such organization they may find difficulty in requirements relating to the location thereof. As was pointed out in the discussion of licensing, consent of the local community may be required before certain establishments can be started. In other words, certain institutions such as an insane or contagious disease hospital in a residential portion of the community may work an injury to its neighbors. Legally, anything which endangers life and health, gives offense to the senses, violates the laws of decency, or obstructs the reasonable and comfortable use of property, has been declared by the courts a nuisance. We will not go into judicial distinctions established as to nuisances per se, private and public etc. There are two steps in dealing with a nuisance.

First, the recognition, declaration, or ascertainment of the existence of the nuisance and, secondly, the abatement thereof. The Legislature may declare as a nuisance only those things which may so become, or such power to declare the existence of a nuisance may be given to the municipality. The grant of power to declare what constitutes a nuisance and to prevent the same authorizes the municipality to declare anything a nuisance which is so in fact, or which by reason of its location, management, or use, may or does become a nuisance. This power may also be given to health boards or authorities. Court opinions will not be here quoted, but the general trend of opinion seems to be that whether or not the erection or management of a hospital, pesthouse, or insane asylum is a nuisance, is primarily a question of fact to be determined in connection with the attendant circumstances.

7. **Establishment and Maintenance of Hospitals.** California provided originally that "every person who establishes or keeps or causes to be established or kept, within the limits of any city, town, or village, any pesthouse, hospital, or place for persons afflicted with contagious or infectious diseases, is guilty of a misdemeanor." This was enacted in 1872, but was repealed in 1917.

Connecticut provides that no asylum, home, or institution for defective, deformed, or incurable persons is to be established or maintained within the limits of any town without the consent of that town, unless under express legislative authority. (G. S. 198, Sec. 1868.) A similar provision is made in New Jersey and Montana.

North Dakota provides that no hospital for the treatment of disease for pay is to be established in any residence block of any city without first filing with the city auditor written consent of resident freeholders of such block. (C. L. 1913, Art. 31.)

Nevada states that it is unlawful for any person, persons, firm, corporation, or association, to locate or maintain any hospital for the treatment of diseased or injured persons within three hundred feet of any public school building. This is not to apply to hospitals at present operated. (R. L. 1912, Sec. 6534.)

Virginia has made it unlawful for the council or board

of health of any city or town, or the board of supervisors or the board of health of any county to maintain any hospital or pesthouse for the reception of patients suffering from smallpox, yellow fever, or cholera within fifty yards of any street, public road, public park, or public cemetery, in any city, town, or county. No such hospital or pesthouse is to be hereafter established within one hundred and fifty yards of any public road, public park, or public cemetery in any county. (Code 1919, Sec. 1560.)

8. **Liability for Negligence.** So far as we know the only state which has enacted a general law exempting hospitals from liability for negligence is Rhode Island. This provision was made following a decision made in Glavin vs. R. I. Hospital, which held the institution liable for certain acts of negligence. The legislation provided that "no hospital, incorporated by the General Assembly of this State, sustained in whole or in part by charitable contributions or endowments, shall be liable for the neglect, carelessness, want of skill, or for the malicious acts, of any of its officers, agents, or employees in the management of, or for the care or treatment of, any of the patients or inmates of such hospital; but nothing herein contained shall be so construed as to impair any remedy under existing laws which any person may have against any officer, agent, or employee of any such hospital for any wrongful act or omission in the course of his official conduct or employment." (General Laws 1909, C. 213.)

9. **Exemption from Taxation.** The distinction between charitable and proprietary institutions is made in matters of tax exemption just as in liability for negligence and elsewhere. A public hospital governmentally owned would not, of course, be taxable in the nature of things. A government does not tax itself for its own support. As a general rule an institution for profit is not exempt from taxation even when the primary purpose is the care and treatment of the sick and when charity work is done. The charitable institution, its buildings, grounds, and appurtenances may be exempt in whole or in part, depending upon the statutory provisions of the State.

10. **Exemption of Public and Charitable Property.** In many respects the construction of statutes, the interpretation

of words, phrases, and intent are the determiners of the extent of exemptions. The Constitution of the State may establish certain limitations of taxation and exemptions therefrom which may in turn be self-executing, as in Alabama, where the constitutional provision reads:

11. **Constitutional Provision.** "The Legislature shall not tax the property, real or personal, of the State, counties, or other municipal corporations . . .; nor lots in incorporated cities and towns, or within one mile of any city or town to the extent of one acre, nor lots of one mile or more distant from such cities or towns to the extent of five acres with the buildings thereon, when same are used exclusively for . . . purposes purely charitable." Missouri, with a similar provision, exempts property to the extent of five acres as does New Jersey.

Arkansas states that "all property subject to taxation shall be taxed according to its value . . . provided, . . . that the following property shall be exempt from taxation: Public property used exclusively for public purposes; . . . and buildings and grounds and materials used exclusively for public charity." Kansas makes a somewhat similar provision. Kentucky exempts public property used for public purposes and institutions of purely public charity. Virginia makes detailed specifications as to exemptions of buildings, lands, funds, etc.

Georgia and Louisiana provide that the General Assembly may exempt from taxation all institutions of purely public charity "provided the property so exempted be not used for purposes of private or corporate profit or income." Mississippi provides further, that property, real and personal, with the revenues derived therefrom, shall be exempt where no dividends are declared and where the revenues thereof are used for fraternal and benevolent purposes. North Dakota, Ohio, Oklahoma, Tennessee, and Utah exempt property used exclusively for charitable purposes. South Carolina exempts the property of charitable institutions, but the "property of associations and societies, although connected with charitable objects, shall not be exempt from state, county, or municipal taxation: Provided, that this exemption shall not extend beyond the buildings and premises actually occupied by such

. . . although connected with charitable objects."

12. **Statutory Provisions.** On the other hand, the constitutional provision may be permissive, leaving to the Legislature the determination of the policy and extent of exemptions, as in Maryland, Wisconsin, Wyoming, Rhode Island, or in Delaware, where "the General Assembly may by general laws exempt from taxation such property as, in the opinion of the General Assembly, will best promote the public welfare." Idaho makes a similar provision.

Arizona: "There shall be exempt from taxation all federal, state, county, and municipal property. Property of educational, charitable, and religious associations or institutions not used or held for profit may be exempted from taxation by law."

Florida and Indiana state that "the Legislature shall provide for a uniform and equal rate of taxation, and shall prescribe such regulations and shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious, or charitable purposes." Washington has a somewhat similar provision.

Illinois and Nebraska exempt the real and personal property of public institutions and "such other property as may be used exclusively for . . . charitable purposes, may be exempted from taxation; but such exemption shall be only by general law."

Massachusetts states that every five years the fair cash value of all land held in any town for hospital purposes is to be assessed and set forth in the annual valuation and tax list at the tax rate of the town for that year. The tax bill is to be sent to the county treasurer and paid from available funds. (Acts 1923, Ch. 271, amending G. L. 58, Sec. 13.)

Minnesota exempts from taxation all "public hospitals and institutions of purely public charity"; Nebraska, South Dakota, West Virginia, property used for charitable purposes; North Carolina, property used for charitable or religious purposes; Pennsylvania and Texas, public property used for public purposes, and institutions of purely public charity.

The enactment made by the Legislature may be a repetition of the constitutional phraseology included in the general

tax law, as in Alabama, Colorado, Kentucky, Minnesota, Nebraska, Oklahoma, South Dakota, Utah, and Virginia. Or it may be modified as in Arkansas, Illinois, and Texas, where the general property tax law exempts all buildings belonging exclusively to institutions of purely public charity, with the land actually occupied and "not leased or otherwise used with a view to profit, and all moneys and credits appropriated solely to and belonging exclusively to such institutions." Wyoming, "public grounds by whomsoever donated to the public."

Arizona, after exempting public or governmental properties, adds, "hospitals, asylums, and poorhouses, owned by the public, and other charitable institutions for the relief of the indigent or afflicted, . . . and lots or lands thereto appurtenant, with their fixtures and equipments, . . ." shall be exempt.

California provides in the general tax law that all property is subject to taxation "except as otherwise provided in the Constitution of the State."

Connecticut and Maine apparently have no constitutional provision exempting property from taxation, but the custom has been repeatedly upheld in the courts. By statute, "buildings or portions of buildings and the land on which they stand, exclusively occupied as . . . infirmaries, "not including real estate held in trust which is leased or used for other purposes than the specific purposes of the association," are exempted.

Colorado exempts from general taxation "lots with the buildings thereon, if said buildings are used strictly for charitable purposes." Nevada makes a similar provision. Florida exempts the real and personal property of benevolent, charitable, and scientific institutions "which shall be actually occupied and used by them solely for the purpose for which they have been or may be organized," but rented property held for speculation or investment is not exempt. This does not apply in cases where the charitable or benevolent institution uses an upper story and leases the lower stories. Idaho adds "from which no profit is derived" to the general exemption of furniture, equipment, grounds, appurtenant thereto and used by hospitals.

Indiana exempts "every building used and set apart for educational, scientific, or charitable purposes by any institution or by any individuals, associations, or incorporations, or used for the same purpose by any town, township, city, or county and the tract of land on which the building is situated, . . . also lands purchased with the bona fide intention of erecting buildings for such use thereon not exceeding forty acres; also personal property, endowment funds, and interest thereon . . . used and set apart for any of the purposes aforesaid." (G. L. 1923, Ch. 191.)

A later provision states that any buildings or land upon which the same are situated, erected, or acquired by any corporation, institution, or association, created, organized, and existing exclusively for charitable purposes, which charitable purpose consists in the dispensing gratis of medical advice and aid to poor persons, pursuant to the last will of any testator, which buildings and lands upon which the same are situate were acquired by means of any devise or bequest, or by the use or application of the proceeds . . . and such building shall be occupied in whole or in part in dispensing such charity and the income of such building is used for charitable purposes; where taxes have been levied heretofore they are not to be collected. (G. L. 1923, Ch. 191.)

13. **Limitations of Holding.** Iowa makes a provision similar to that of Indiana, the amount of land held is not to exceed one hundred and sixty acres and is not to be leased or used with a view to pecuniary profit. "All deeds or leases by which such property is held are to be filed for record before the property is exempt." Wisconsin limits the land held to ten acres.

Maryland exempts also the gifts of non-residents "or of any corporation not chartered by this State." Michigan, New Hampshire, New Jersey, and Oregon require that the institution be incorporated under the laws of the State. New Hampshire limits the exemption to $150,000, which may be increased by vote of the town.

New York exempts the real property of an association or corporation organized exclusively for charitable, benevolent, hospital, or infirmary purposes, if no officer, member or employee thereof receives any pecuniary profit aside from

reasonable compensation for his services. Real property from which no rents, profits, or incomes are derived is exempt, "though not in actual use therefor by reason of the absence of suitable buildings or improvements thereon, if the construction . . . is in progress, or is in good faith contemplated. . . . The real property . . . leased or otherwise used for other purposes, shall not be exempt, but if a portion only . . . is used exclusively for carrying out thereupon one or more such purposes . . . then such lot or building shall be exempt only to the extent of the value of the portion so used, and the remaining shall be subject to taxation." It is provided, however, that property actually used for hospital purposes or "by a free public hospital, depending for maintenance and support upon voluntary charity, shall not be taxed as to a portion thereof leased or otherwise used for purposes of income, when such income is necessary for, and is actually applied to the maintenance and support of such hospital." (Laws 1918, Ch. 288.)

Maryland recently amended its law to provide that "no real estate or any estate therein heretofore or hereafter acquired and held for future use, and not for investment by any hospital or asylum not organized or conducted for profit, shall be subject to state, county, or municipal taxation" before January 1, 1924. (Laws 1922, Ch. 193.)

Mississippi exempts all property, real or personal, whether belonging to religious, charitable, or benevolent organizations which is used for hospital purposes and which maintains one or more charity wards that are for charity patients, and where all the income from said hospital is used entirely for the purposes thereof and no part of the same for profit. Such property shall be exempt from all taxation, both ad valorem and privilege. (Laws 1922, Ch. 134.)

Pennsylvania states that "all real property owned by one or more institutions of purely public charity, used and occupied partly by such owner or owners and partly by other institutions of purely public charity and necessary for the occupying and enjoyment of such institutions . . . are exempt from all and every county, city, borough, township, road, school, and poor tax. (Laws 1923, No. 360.)

Tennessee exempts property used for purely charitable

purposes and provides further that all "property belonging to such institution used in secular business and competing with a like business that pays taxes to the State, shall be taxed on its whole or partial value in proportion as the same may be used in competition with secular business." (Supp. 1903, p. 71.) Further, it permits the boards of trustees of religious, charitable, or eleemosynary institutions to acquire, own, hold, mortgage, and dispose of property, real and personal, "for the use and benefit of, under the discretion of, and in trust" for the electing, controlling, and parent body. (G. L. 1923, Ch. 81.)

Vermont exempts real and personal estate granted, sequestered, or used for public or charitable uses, but not "lands or buildings owned or kept other than a building used as a home or a hospital, lands adjacent to such edifice, which are kept and used as a lawn, playground or garden and the so-called glebe lands . . . the lands and buildings used exclusively for the support of hospitals which, "without pay, receive and care for indigent, old, or infirm patients or inmates, shall be exempt from taxation, when such lands or buildings are located in the town in which such institutions are situated." (Gen. Laws 1917, Sec. 687.)

In Washington an institution claiming exemption is to provide in its articles of incorporation that the mayor of the city and the chairman of the board of county commissioners wherein the institution is located, are ex-officio trustees thereof with the powers of trustees. (Laws 1915, Ch. 131.)

West Virginia provides that all property belonging to any public institution or to any hospital or lunatic asylum not conducted for profit, is to be entered on the assessor's books but is not to be taxed.

14. **Transfer or Inheritance Tax Laws.** Special statutory exemptions are usually included in the transfer or inheritance tax laws, as in Arkansas, where "all property transferred in good faith to societies, corporations, and institutions now or hereafter exempted by law from taxes, or to any public corporation, or to any society, corporation, institution, or association of persons engaged in or devoted to any charitable, benevolent, . . . public or other like work

(pecuniary profit not being its object or purpose), or to any persons, society, corporation."

California, Idaho, Illinois, Indiana, Kansas, Kentucky, and others make similar provisions, while Colorado and Maine exempt all transfers of property to the State, county, city, town, or municipality or for religious or charitable purposes exclusively, "provided, however, that the same be situated within this State, or the property be limited for use within this State."

Delaware exempts from the collateral inheritance tax any property for charitable, educational, or religious societies or institutions. Montana, New Hampshire, and Wyoming require that property transferred shall be exclusively used for the purposes of the organization within the State; New York, that the institution shall be incorporated.

North Dakota exempts the following organizations from the income tax law: Corporations organized and operating exclusively for religious, charitable, scientific, or educational purposes, . . . no part of the net earnings of which inure to the benefit of any private stockholder or individual. (S. L. 1923, p. 200.)

South Dakota exempts property to the clear value of $2,500 transferred to a public hospital or purely charitable institution within the State.

New York provides that no person having a husband, wife, children, or parent shall by his last will and testament devise or bequeath to any benevolent, charitable, . . . scientific, religious, . . . society, association, corporation, or purpose in trust or otherwise, more than one-half of his or her estate, after the payment of his debts, and such devise or bequest shall be valid to the extent of one-half and no more. (Laws 1925, Ch. 301, amending L. 1909, Ch. 18.)

Wisconsin states that "all property transferred to municipal corporations within the State for strictly county, town, or municipal purposes, or to corporations of this State organized under its laws, solely for religious, charitable, or educational purposes, which shall use the property so transferred, exclusively for the purposes of their organization, within the State, shall be exempt" from the inheritance tax.

The franchise tax laws in Alabama exempt strictly benevolent, educational, or religious corporations.

15. **Corporation Taxes.** The corporation tax acts, as in Alabama, where corporations organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to any private stockholder or individual, may include exemptions. Delaware exempts corporations organized for religious, charitable, scientific, or educational purposes, "no part of the net earnings of which inures to the benefit of any private stockholder or individual" from the income tax law.

16. **Municipal Assessments and License Taxes.** There may be an additional exemption from municipal and license taxes, as in Alabama, where the property of corporations for other than pecuniary purposes is exempt from all state, county, and municipal taxation and licenses to an amount not exceeding $2,000.

It must be noted that municipal assessments and regulations are not herein included and that judicial interpretations further modify, explain, or clarify the enactment made in each state by constitutional, general, or other provision.

17. **Disposition of Dead Bodies.** The disposition of a dead body, the performance of an unauthorized autopsy, and the unauthorized operation upon a patient, are for the most part medical acts regulated by the general medical practice acts or criminal law of the different states. These acts will not be herein included. In general, before the body of a deceased human being is buried, there is a right vested in the husband or wife or next of kin to possession, for the purpose of burial or other legal disposition of it. It has been held repeatedly, judicially, that where an unauthorized autopsy is performed, an action at law may be maintained. (1897, Burney vs. Children's Hospital, 169 Mass. 57, 47 N. E. 401.) The question could be well raised as to the officer or person against whom such action should be brought. It has been generally held that a charitable institution is not responsible for the acts in negligence of officials, physicians, or nurses selected for their position with due care as to their qualifications. This would indicate that such action should ordinarily be brought against such officer or physician in his

private capacity unless the institution clearly gave consent and had official knowledge of such unauthorized autopsy.

The coroner, of course, may order an autopsy if in his judgment it is the proper method of ascertaining the cause of a person's death, even without the consent of the family. It is obvious, then, that in order to be legal, the autopsy must either be authorized by the coroner acting in his official capacity, with or without the consent of the family, or it must be done with the consent of the family.

18. **Permission for Autopsy.** Connecticut has required that "whenever any sick or disabled person shall be placed in a hospital for treatment and before being removed therefrom shall die . . . it shall be unlawful for any physician to conduct or assist in conducting any post-mortem examination or autopsy upon the body of such deceased person without obtaining the written consent of the . . . next of kin or friends representing the deceased and claiming the custody of the body; and in case the hospital authorities, after due inquiry and diligence, shall be unable to find such relative or friends, such autopsy shall not be made until after a reasonable time, not exceeding forty-eight hours, has elapsed.

Some states provide by statute that bodies to be buried at public expense, after the lapse of a period of time, usually twenty-four hours after death, may or must be surrendered "for the advancement of anatomical science" to certain named authorities,—the State Board of Health, medical schools in California, Connecticut, Mississippi, or any licensed physician in the State of Colorado (preference being given to the faculty of a legally organized medical college).

A board for the distribution of such bodies may be named as in Georgia, Pennsylvania, and West Virginia.

In Kansas where a sudden, unexpected, or mysterious death occurs to an inmate of any public or private hospital or asylum for the insane, notice is to be given the coroner and inquest held.

19. **Selection of Medical Staff.** Montana requires that "every person, persons, corporation, or association conducting a hospital . . . not held for private or corporate profit or . . . that are institutions of purely public charity . . . exempt from any state, county, or municipal

tax, . . . shall not in any manner discriminate between the patients of any regularly licensed physician by reason of the fact that said physician is not a member of the medical staff of said hospital. . . ." (Laws 1913, Ch. 114.)

Nevada states that in the establishment and maintenance of county hospitals there is to be no discrimination against the practitioners of any regular school of medicine and surgery recognized by the laws of Nevada, and all such regular practitioners shall have equal privileges in treating patients in the hospital. The patient has the right to employ his own private physician, who has exclusive charge of the care and treatment of such patient, the nurses to be subject to his direction in caring for the patient.

The trustees are to organize a staff of physicians "composed of every regular, practicing physician in the county . . . and each physician shall hold his position on the staff so long as he complies with the rules and regulations" of the trustees. There is to be a rotation of services to secure proper care for indigent patients, the trustees to determine who are indigent patients. (Stats. 1923, Ch. 172.)

A proprietary institution is liable for the acts of its servants.

A governmental or public hospital is, as a general rule, not responsible for such unwarranted trespass on the part of its servants, and inasmuch as the State in the performance of an official duty, such as the care of the sick, is not liable for the torts of its servants, without the consent of the State, such action would probably not be entertained. This follows the general law of public officers by which such persons acting in the interest and for the benefit of the public, and under the color of the authority of their office, are said to be exercising a power essentially governmental in its nature. This official discretion will not be questioned except that the courts will interfere to control actual abuse.

20. **Detention of Patients.** It is axiomatic to say that a person cannot be lawfully held or detained in an institution or hospital against his will unless actually insane. Alabama, Kansas, and Mississippi impose penalties for such unlawful imprisonment. Kansas, Massachusetts, and North Dakota

regulate the application of apparatus to restrain persons insane or violent.

21. **Payment for Service.** On the other hand, a person who deliberately undertakes to defraud the hospital by obtaining accommodation or service therefrom, refusing to pay for such service, is declared in New Jersey to be a disorderly person, punishable at law. Similar provisions appear in the laws of other states, Maryland, North and South Carolina, and Ohio. In Connecticut, hospitals which receive state aid are to have a lien on the accident and liability insurance policies for medical and other service or materials furnished the patient. (P. A. 1923, Ch. 235.) Fee splitting among physicians or hospitals may be regulated by statute, as in Kansas, where it is unlawful for any person, firm, or corporation, owning, operating, or controlling any hospital in the State, to pay directly or indirectly to any physician or surgeon any commission or consideration of any kind whatever for advising any patient to go to such hospital for treatment or operation or for bringing any patient to such hospital for any such purpose. (G. S. 1915, Sec. 3810.)

22. **Ambulance Service.** New York has permitted the village of Larchmont to levy an annual tax of not more than $1,000 per year for ambulance service and to make a contract for that service. (Laws 1923, Ch. 456.)

Under the motor vehicle law of Indiana, hearses and ambulances are to be classified as passenger cars and fees applied according to passenger car rates. (Laws 1923, Ch. 186.)

23. **Workmen's Compensation Provisions.** The workmen's compensation laws, as a rule, regulate the provision for the care and treatment of injured employees. Oklahoma requires an employer to "provide promptly" for an injured employee . . . hospital service . . . necessary during sixty days after injury or such time in excess thereof as in the judgment of the Commission may be required. . . ." The charges for service rendered must be submitted to the State Industrial Commission for approval and such charges are to be limited to "such charges as prevail in the same community for similar treatment of like injured person."

(Acts 1923, Ch. 61.) Colorado sets the time at sixty days, the cost at $200. The regulations of the states vary somewhat.

Minnesota designates a time not exceeding ninety days, provided, this may be extended by the Industrial Commission. (S. L. 1923, Ch. 300.)

West Virginia authorizes the Industrial Commission to expend more than $600 for medical, surgical, and hospital service in certain cases where the permanent disability may be reduced or made negligible by additional care. (Acts 1923, Ch. 58.)

The liability of the institution for injury to employees under these laws is not particularly different from the general rule of liability. An employee of a state hospital injured in his work may or may not be compensated for his injury. The number of cases at point is negligible and the direct application of the statute is in the hands of the Industrial Board of Commissioners, usually. California publishes the holdings of its Commission and occasionally the matter of the contraction of a disease by an intern or nurse from a patient while on duty has been considered and compensation awarded by the Commission.

24. **Use of Hospital Records.**[2] It is not an unusual provision in statutes relating to the organization of hospitals, and the licensing of maternity and other hospitals, that records shall be kept of the patients admitted or receiving care. Massachusetts provides that hospitals supported by the State or town or offering public charitable treatment, are "to keep records of the cases under their care, and the history of the same, in books kept for the purpose." These books are to be admissible "as to all matters therein contained." (Stats. 1905, Ch. 330.)

A more recent provision in the same state reads: "Hospitals supported in whole or in part by contributions from the Commonwealth or from any town, incorporated hospitals offering treatment to patients free of charge, and incorporated hospitals conducted as public charities, shall keep records of the treatment of the cases under their care and the medical history of the same. . . ." An amendment

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[2] See use of records in maternity hospital, Alabama, p. 520.

provides that these records kept by hospitals shall not be open for public inspection as required by Ch. 66, Sec. 10, G. L. The amendment reads: "Section 10 of Chapter 66 shall not apply to such records, provided that upon proper judicial order, whether in connection with pending judicial proceedings or otherwise, or upon order of the head of the state department having supervision of such hospital (the Department of Public Welfare), and in compliance with the terms of said order, such records may be inspected and copies furnished on the payment of a reasonable fee." (Acts 1923, Ch. 337.) The records of venereal diseases, it is elsewhere declared, are not to be public records. (G. L. 1921, Ch. 111, Secs. 119, 120.)

It is not unusual that statutes in the various states require reports and records of the various hospitals, as in cases of birth or death, contagious disease, venereal disorders, etc. Arizona states that lying-in institutions, hospitals, almshouses, or other institutions, public or private, "to which persons resort for treatment of disease, confinement, or are committed by process of law, are hereby required to make a record of all personal and statistical particulars relative to the inmates in their institutions. . . ." (1913, Civil Code, Sec. 4421.) A similar requirement is made in Colorado, Florida, Idaho, Illinois, Louisiana, Maryland, Michigan, and others.

Some states have made the hospital records admissible in evidence, particularly in the case of workmen's compensation laws. Minnesota states that the records kept by a hospital may be admissible as evidence of the medical or surgical matters stated therein, "but shall not be conclusive proof of such matters." (Stats. 1921, Ch. 41, Sec. 54.)

Colorado provides that the Industrial Commission may receive as evidence and use as proofs hospital records on the case of an injured or deceased employee. (S. L. 1923, Ch. 203.)

Missouri has declared that the records of "every hospital or other person furnishing the employee with medical aid is admissible by certified copy." (Rev. St. 1919, Sec. 13605.) Pennsylvania declares that "the records kept by a hospital of the medical or surgical treatment given to an employee

in such hospital, shall be admissible as evidence of the medical and surgical matters stated therein." (Sts. 1919, June 26, Sec. 6, Digest, Sec. 22044.)

Massachusetts has provided that copies of hospital records which are certified by the persons in charge to be true and complete, shall be admissible in evidence in proceedings before the Industrial Accident Board or any member thereof. The Board may also require the original record. (G. A. 1919, Ch. 198, p. 152, Sec. 19.) New York states that the contents of verified medical and surgical reports introduced in evidence by claimants for compensation shall constitute prima facie evidence of the facts of the matters contained. (Laws 1923, Ch. 568, amending L. 1922, Ch. 615, Sec. 21, Subd. 5.)

New York, on matters of habeas corpus in insanity proceedings, makes admissible the patient's "medical history . . . as it appears in the case book" of a state hospital. (Consol. L. 1909, Insanity, Sec. 93.)

25. **Regulation of Hours, Labor, and Conditions of Employment.** Some of the states have regulated the hours of employment in certain trades and industries. In Oregon, by interpretation, the eight-hour day law has been applied to state institutions. North Carolina regulates the hours of duty for students in training to become nurses in medical and surgical institutions as not longer than twelve. In emergency or special cases, sixteen hours is permitted. Sleeping facilities are to be provided and the student on special duty is to be given the opportunity to sleep. (Ann. Stats. 1919, Sec. 6741.)

California limits the hours of employment for women to not more than eight hours a day of twenty-four hours, nor more than forty-eight hours in any one week. Employment in more than one establishment is prohibited. The law, however, is not to be applied to graduate nurses in hospitals. (Stats. 1919, Ch. 248.)

Kansas provides an eight-hour day for all "laborers, workmen, mechanics, or other persons" now or hereafter employed by or on behalf of the State, any county, city, township, or municipality . . . except in cases of extraordinary emergency, which may arise in time of war or in

cases "where it may be necessary to work more than eight hours per calendar day for the protection of property or human life. . . ." (Laws 1923, Ch. 157.)

26. **Administration of Anesthetics.** Ohio further qualifies the hospital procedure in the administration of anesthetics. It is provided that "whoever uses upon another an anesthetic unless, at its administration and during the whole time the person is wholly or partly under its influence, there is present a third person competent to be a witness," shall be fined $5 to $25. It is elsewhere provided that a registered nurse may administer an anesthetic "under the direction of and in the immediate presence of a licensed physician, provided such nurse has taken a prescribed course in anesthesia, at a hospital in good standing. (108 v. P. T. 1, 131.)

(G) Industrial Hospitals

Some industrial companies, such as mines and railroads, establish their own hospitals and collect fees from their employees for the support thereof. Arkansas, for example, makes the requirement that "every railroad company or corporation operating railroads in this State who have heretofore collected or received hospital fees from their employees or who may hereafter collect or receive fees from such employees, shall provide hospital facilities in the State, of such capacity and equipment as will be sufficient for the care, needs, and accommodation of their sick or injured employees, residents of the State. Any such employees injured while in the service of any such railroad, shall not be taken or sent out of the State for treatment." (Digest 1911, Sec. 6645 A.)

California, Nevada, Oregon, and Pennsylvania regulate the conduct of such hospitals, also, the collection of fees, duration of contracts, etc. New York requires that any person in passing a public hospital, when the driver of any vehicle or street surface car, "shall proceed with extreme care and with the vehicle or street surface car under control, provided the local authorities have legible and visible signs posted, warning drivers "of their approach to a public hospital." (Laws 1917, Ch. 655, Sec. 14.)

(H) Construction Requirements

Indiana has created the Administrative Building Council to administer, execute, and enforce laws relative to the construction, repair, or maintenance of places of employment and public buildings. The Board is to ascertain, fix, and order standards, rules and regulations with the approval of plans and specifications for places of employment and public buildings. (Laws 1923, p. 64.)

Ohio gives to the Board of Building Standards the power to make public buildings safe and sanitary. (Laws 1923, p. 350, amending Code, Sec. 12600-277.)

A number of the states regulate the erection and construction of fire escapes. Minnesota requires hospitals and asylums, two or more stories high, when possible, to be provided with an inside or outside stand pipe; a chemical fire extinguisher on each floor above the first, exits, non-combustible stairways, ladders, and fire escapes "in such numbers and of such character and size as may be determined from time to time by proper local authorities." (G. S. 1913, Sec. 5110.)

Ohio states that fire escapes used in connection with hospitals shall be provided with landings or balconies of such dimensions as to permit the easy handling of a cot at the various turns or landings. (G. C. 1912, Sec. 12600-113.)

In Pennsylvania the number of stairways and other means of egress are to be determined by the chief of the Bureau of Building Inspection. (Stats. 1920, Sec. 3349.)

Every building in Pennsylvania having more than two stories, or with one or more galleries above the first or ground floor, is to be equipped with an automatic sprinkler system or an automatic fire alarm system to be approved by the Commissioner of Labor and Industry. (1919, P. L. 406.)

(I) Safety and Elevator Guards

Pennsylvania regulates the construction and guarding of elevators, hoisting shafts, lifts, or well-holes in hospitals, the same "to be properly and substantially enclosed, secured, or guarded; and shall provide such proper traps or automatic doors, so fastened in or at all elevator ways, except elevators enclosed on all sides, as to form a substantial surface when

closed, and so constructed as to open and close by action of the elevator in its passage, either ascending or descending." The cable, gearing, or other apparatus of elevators, hoisters, or lifts are to be kept in safe condition, and the law is not applicable to cities of the first and second class. (Stats. 1920 (West), Sec. 13592.)

Rhode Island requires that every building three or more stories high, used wholly or in part as a hospital or asylum, is to be provided with either "proper and sufficient, strong and durable, metallic fire escapes upon the external walls, sufficient in number, . . . or with proper and sufficient incombustible stairs and stairways at opposite ends of the building." These are to be kept in repair. (G. H. 1909, Ch. 129.) Virginia requires that the type or design of the fire escape which must be provided be selected by the council of cities or towns, or the board of supervisors of the county. Wyoming requires a "safe and suitable metallic tunnel, iron or fireproof ladders, or stair fire escapes with a guard rail."

There are, of course, many local and special regulations governing the establishment and maintenance of the hospital such as the disposition of laundry, screening requirements, garbage disposal, etc. These have not been included and the compilation of them would be almost impossible. New Jersey, on the other hand, requires that no person or firm "shall use in whole or in part . . . mattresses, bed springs, cots . . . or other material which has been used in . . . or about a public or private hospital or about any person having infectious or contagious diseases." The material is to be labeled to prevent confusion with other things. (Laws 1912, Ch. 171.) Kansas has a similar provision. (Laws 1923, Ch. 165.)

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